

THE LIBRARY OF THE
UNIVERSITY OF
NORTH CAROLINA



THE COLLECTION OF
NORTH CAROLINIANA

C378
UD5
c.2

UNIVERSITY OF N.C. AT CHAPEL HILL



00016894951

This book may be kept out one month unless a recall notice is sent to you. It must be brought to the North Carolina Collection (in Wilson Library) for renewal.



Digitized by the Internet Archive
in 2012 with funding from
University of North Carolina at Chapel Hill

THE HISTORY
OF
ESCHEATS

By

Dr. Blackwell P. Robinson

THE UNIVERSITY OF NORTH CAROLINA
CHAPEL HILL

1789-1955

C 378

WII5

C.2

TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTION	4
CHAPTER 1. ESCHEATS: 1789-1875	6
2. ESCHEATS: 1875-1937	25
3. ESCHEATS: 1937-1955	35
EXHIBIT A. ESCHEATS PRINCIPAL FUND	56
B. COLLECTIONS BY SOURCES, 1933-1955	57
C. DISTRIBUTION OF SCHOLARSHIPS	58
D. INCREASE IN ESCHEATS FUND, 1939-1955	58
PRESENT STATUTORY LAW RELATING TO ESCHEATS	59

Introduction

The concept of the law of escheats antedates the oldest English common law. In fact, it may be traced to early Roman history where it was known as *caduca*. Stated in its simplest terms, as it was applied in England, all lands reverted to the next lord on the failure of heirs of the tenant of the lands. This, in turn, is based on the feudalistic idea of a freehold estate as an interest in lands held by the freeholder from some lord, with the king as the lord paramount.

Commenting on the rights of escheat which accrued either because of a failure of heirs or a termination of the estate, Blackstone, 2 Com. 72, says: "The last consequence of tenure [of land] in chivalry, was escheat; which is the determination of the tenure, or dissolution of the mutual bond between the lord and tenant from the extinction of the blood of the latter by either natural or civil means. If he died without heirs of his blood, or if his blood was corrupted and stained by commission of treason or felony, whereby every inheritable quality was blotted out and abolished, in such cases the lands escheated or fell back to the lord of the fee."¹

In more recent years in England very few freehold estates may be traced to any mesne or intermediate lord. Therefore, escheats usually fall to the king as lord paramount.

In the United States, according to Webster, the word "escheat" means "the falling or passing of lands and tenements to the State through failure of heirs or forfeiture, or in cases where no owner is found." This principle existed in a few colonies before the American Revolution, but since then, it exists in each state only so far as it is regulated by statute. In North Carolina escheated property reverted to the eight Lord Proprietors until 1729. After the royalization of the colony by George II, it was the king who claimed escheats.

And it is with the regulation and application of this principle or law as it applied to North Carolina that the present brief history of escheats to the University of North Carolina is concerned:

¹ Escheat was formerly divided under the heads of escheat *propter defectum sanguinis* (failure of heirs) and escheat *propter delictum tenentis* (for the felony of the tenant); the latter kind of escheat, however, has, together with forfeiture for the same causes, been abolished in England by 33 and 34 Vict. c 23. In the United States it is regulated by statute in each state.

How the framers of our government seized on this feudalistic, monarchistic law and turned it into an instrument for the establishment and maintenance of a democratic institution of higher learning. And how this democratic process has been extended even further (since 1946) by the appropriation of the funds derived from escheats to scholarships for the education of worthy students at the three institutions of the Consolidated University of North Carolina.

Chapter I

Escheats: 1789-1875

To trace the history of escheats to the University of North Carolina, one must go back to the year 1776 when the Provincial Congress, meeting at Halifax, incorporated into their constitution a mandate to the General Assembly. This mandate, comprising Section 41 of that instrument, is a direct analogue of Section 44 of the Pennsylvania Constitution. It provided that "a school or schools be established by the Legislature, for the convenient Instruction of Youth, with such Salaries to the Masters, *paid by the Public* (*italics mine*), as may enable them to instruct at low prices; and all useful Learning shall be duly encouraged and promoted in one or more Universities."

This article is the constitutional basis for the North Carolina public school system—from the elementary grades through the University. As might be expected this mandate, as far as the establishment of a university is concerned, remained dormant during the War of the American Revolution, but the year after the Treaty of Paris, signed in 1783, William Sharpe of Rowan County, led an abortive attempt to establish a state university. It was not until December, 1789, twenty days after the adoption of the Federal Constitution, that a successful bill, introduced by William Richardson Davie, was guided through the legislature.

In the preamble, Davie set forth in Beccarian phraseology and sentiment, the premise that "in all well regulated Governments, it is the indispensable duty of every Legislature to consult the Happiness of a rising generation, and endeavour to fit them for an honourable discharge of the social duties of life, by paying the strictest attention to their education." It followed logically that "an University supported by public funds and well endowed, would have the most direct tendency" to answer this purpose.

A cooptative board of the most prominent men in the state were declared to be a body politic and corporate, and they were to be designated as trustees of the University. These trustees were to be "able and capable in Law to take, demand, receive, and possess all monies, goods, and Chattels" and "any Lands, Rents, Tenements, and Hereditaments" that should be given them for the use of the University.

Cognizant that it should be supported by "permanent funds" and "well endowed," Davie's bill sought to encourage gifts and subscriptions by a provision to the effect that anyone subscribing within the next five years, ten pounds, at five equal annual payments should be entitled to have one student educated at the University free from any expense of tuition. Article X, moreover, provided that "the public hall of the library and four of the colleges shall be called severally by the names of one or another of the six persons who shall within four years contribute the largest Sums towards the funds of the University, the highest subscriber or donor having choice in the order of their respective donations."

Contemporary evidence is unfortunately lacking concerning the debates which ensued upon the bill. Davie's ante-bellum biographer, Fordyce M. Hubbard, asserted that they encountered "much resistance," since "men of liberal culture were many indeed, but not common." In fact a large portion of those "who would be called on to vote, indirectly at least, upon the project, had never enjoyed the benefits of learning, and could not easily appreciate them." Many ignorant men saw the plan as "one step towards a permanent aristocracy," while others, "who felt the hard pressure of the public burdens, might find the expense a sufficient objection." Finally, the question "mingled itself also, to some extent, with party politics." Therefore, to disarm the cries of the opposition for "economy" and "a peculiar regard for the poor" was a task of no mean proportions.

Davie met his worst opposition in the legislature, where "the dread of forfeiting public favor gave greater force to objections which the people, out of doors, had entertained." In fact, it took a combination of "tact, logic, satire, eloquence" to carry the measure.

An examination of the University Act, which was passed December 11, 1789, reveals that there was no appropriation of money for the new-found institution. Four days later, however, a bill, probably drafted by Davie, was introduced to meet this deficiency by providing for a building fund and for the support of the University. Chief opposition to this bill was encountered in the House of Commons, where Thomas Tyson of Moore County entered his protests against its passage. His opposition was based on the fact that he believed the bill "to be repugnant to the Constitution of this State to grant any exclusive emoluments to any man or set of men except for services rendered." Secondly, he

believed that "applying part of the public revenue to the above mentioned purpose must augment the Tax on the Citizens who can by no means be in any measure benefitted thereby." Tyson's protest, however, was not of sufficient weight to prevent the passage of the bill.

The Act, as passed, vested in the Board of Trustees "all monies due and owing to the public of North Carolina, either for arrearages under the former or present government" up to January 1, 1783, except monies or certificates due for the purchase of confiscated property." It also vested in the Trustees "all the property that has heretofore or shall hereafter escheat to the state." Finally, it provided that all property, of whatsoever kind, belonging to the University should be "exempt from all kind of public taxation."

Under this Escheat Act of 1789, there were two common cases of reverter which were to afford revenue to the University:

"1st. When the owner dies without heir, or heir capable of taking real estate.

"2nd. When the owner is an alien, and not, by the 40th section of the State Constitution, qualified to purchase and hold real estate. In this case there is an owner, till on inquiry instituted by the State, the claimant is found and judicially declared to be an alien."

According to the late Dr. R. D. W. Connor, these "liberal provisions" made the University of North Carolina "potentially one of the most richly endowed institutions of learning in the American Union but many years were to pass before the Trustees were able to turn these resources into ready cash."

The arrearages referred to were those due from sheriffs and other officers prior to January 1, 1783; none of them was less than six years old and some far more. The gift of the proceeds from the sales of confiscated property was withheld, because, according to Dr. Kemp Plummer Battle, the University's historian, the legislature deemed them easily collectible.

Dr. Battle further describes the grant of escheats to the University as a right which was "shadowy, uncertain, well nigh *in nubibus*, but which in the course of time by skillful management brought considerable money into the treasury." This grant, as a matter of fact, became, thanks to the "energy and good management of the Trustees," the "source of the endowment of the University" up to the Civil War.

In the early days of the University a chief source of revenue from escheats was the lands of residents of foreign birth who left no heirs who were citizens of North Carolina. Until the law was changed in 1831, these lands escheated to the University. There were also a great many "obscure soldiers of the Continental Line," to whom land warrants were granted for their services in the Revolution, who died without heirs. Naturally, as the years rolled away from the Revolution, this source of revenue diminished. The legislature further diminished this source by an act which gave lands to a remoter heir, who was a citizen, when the next heir is an alien and by an act which gave the widow all the estate if her husband should die without heir.

Particularly interesting was the litigation which developed in regard to unclaimed land warrants in the present state of Tennessee. In lieu of hard money, the legislature was reduced to the alternative of recompensing its patriot soldiers in paper currency and in land warrants in western Tennessee. The amount of land so distributed was according to rank in the army. A private was given 640 acres; a lieutenant, 2,560 acres; a colonel, 7,200; and a brigadier-general, 12,000. General Nathanael Greene was given no less than 25,000 acres.

This gift of unclaimed land warrants was described by Battle as being "like the cool water near the parched lips of Tantalus." This situation arose over the fact that when North Carolina entered the Union in 1789 it ceded all its territory of Tennessee to the United States. When the new state was admitted to the Union in 1796 it quite naturally claimed all the rights of sovereignty within its borders and refused to give effect to the grants made by North Carolina.

Dr. Battle maintained—and rightly so—that the *State* of North Carolina itself would never have secured an acre of these lands. The only argument which prevailed or had any weight with the Tennessee legislature was that the lands were to be used for education. To plead their cause before the Tennessee legislature, the Trustees sent one of their most persuasive and adroit members, Archibald De Bow Murphey. Despite his eloquence and pertinacity he was forced to accept a compromise in 1822 by which the University of North Carolina received only one-third of the warrants and the College of East Tennessee and the College of Cumberland together received the other two thirds, by which the former received 40,000 acres and the latter 20,000. Finally, in 1835, sufficient funds were derived from this source

and from the donations of a number of generous grantors, such as Governor Benjamin Smith, Charles Gerrard, and others, to enable the University to lift its head above the troubled financial waters.

Returning to the early efforts of the University to collect escheats, the Board of Trustees was delighted at its meeting in Fayetteville in the fall of 1790 to receive \$2,706.41 which was paid in by John Harvey, the clerk of Perquimans Court, who had recovered it from a delinquent "Commissioner of Specifics." This unexpected sum was promptly invested in United States bonds at 6% interest.

The following meeting of the Board of Trustees concerned itself chiefly with ways and means of collecting the arrearages and escheats granted by the Assembly. For this purpose, each Trustee was authorized to act as agent of the Board in the matter of escheats and an attorney was appointed in each judicial district and vested with full powers of collection of escheats and arrearages. Chosen for their ability and their friendship to the University, their names were as follows:

Edmund Blount
David Perkins
William H. Hill
Thomas F. Davis
Adlai Osborne
Waightstill Avery
William Watters
John Whitaker

Edenton District
New Bern District
Wilmington District
Fayetteville District
Salisbury District
Morgan District
Hillsborough District
Halifax District

In addition, each Trustee was furnished with a power of attorney and was empowered to receive escheated property in his district. To the sum of \$2,706.41, derived from arrearages due by delinquent collecting officials, the University attorneys succeeded in adding other accounts, making a total of \$7,362. Other sources of revenue, it was decided, should come from subscriptions from private individuals throughout the state and from an appeal to the legislature for a loan of \$10,000. This appeal was presented by Davie, who argued that "notwithstanding every possible exertion on the part of the Trustees, their funds remain so small as to afford but a distant hope of their being able to effect the end of their appointment." The money which they expect to be derived from escheated property might "at some future time be considerable, but the difficulty and delay attendant on the getting it in possession, will in all probability place the day when those sources of revenue to the Board will become operative, in a far more distant Time than that in which the Trustees had

fondly hoped they should see the University of North Carolina rise into existence and become more than a Name." Such being the case, the Trustees stepped forward and asked the General Assembly for the loan of five thousand pounds.

Davie's eloquence won the day, and the loan was carried. Later it was converted into a gift and represented the only appropriation ever made from the state treasury until the annuity of \$5,000, granted in 1881, with the exception of \$7,000 for the suffering officers soon after the Civil War.

Hardly had the Board of Trustees instructed its attorneys in the several judicial districts "to sue for, recover, and take into possession all such escheated property as may be within their respective Districts" than an attack was launched in the House of Commons to repeal the Escheats Law. Commenting on this unsuccessful bill, which got no further than its first reading, Dr. R. D. W. Connor stated that "it proved to be the forerunner of other bills of the same import and purpose that were dropped into the legislative hopper, session after session, until the rising tide of public sentiment forced the lawmakers to repeal the obnoxious Act of 1800."

Even more unpopular than the Escheats Act of 1789, but closely related to it, was another grant made by the Assembly to the University. This grant gave the Trustees, for the next ten years, all unsold land which had been confiscated from the Loyalists during the Revolution. Included in this grant was the vast domain of Henry Eustace McCulloh, a British subject who had forfeited his rights for lands contracted to be sold by him, but title to these lands had been withheld for security of the purchase money. As a result, able lawyers, employed by the Trustees, began to institute suits against a number of persons in Mecklenburg and adjoining counties to realize funds under this act.

Typical of the notices of sales which appeared in the state weekly papers was the following one which appeared in the *North Carolina Journal*, published July 18, 1796, at Halifax:

NOTICE.

A FEW Tracts of land in Mecklenburg county, formerly the property of Henry E. McCulloh, Esq. will be sold at Charlotte, in the said county, on Friday the 29th instant. Also a few small Tracts of Land of the same description, lying in Rowan county, will be sold at Salisbury, on Saturday the 6th of August next. Also two small Tracts, and one of about 500 acres, (unless sooner disposed of by compromise) in Cabarrus county, of escheated land, will be sold at the courthouse in Cabarrus, on Wednesday the 20th instant, pursuant to an ordinance of the Trustees of the University of North Carolina.

Ad[lai] Osborn, Commissioner, xc.

Yet despite the prospect of increased revenue, this act of 1784, according to Dr. Battle, was "a distinct injury" to the University, since it "raised unfounded hopes and caused the University to be hated in a very powerful section of the State" and, as a matter of fact "well nigh caused its ruin."

In the minds of the people at large, this confiscation act of 1794 was coupled with the Escheats Law of 1789. As a result, the Escheats Law was doomed largely on account of the unpopularity of the Confiscation Act.

Three bills, brought before the General Assembly in 1799 and 1800, expressed this rising tide of hostility to the University. The first bill, defeated in the Senate in December, 1799, provided for the repeal of the second section of the Act of 1789, which vested escheats in the Board of Trustees. A second bill, passed later that month, suspended the operation of both the Escheat Act of 1789 and the Confiscation Act of 1794 until the end of the next General Assembly. The final bill, passed in December, 1799, was an outright repeal of both acts, in which it was provided

That from and after the passing of this act, all acts and clauses of acts which have heretofore granted power to the Trustees of the University of seize and possess any escheated or confiscated property, real or personal, shall be and the same is hereby repealed and made void.

Dr. Battle's appraisal of this action is worthy of note:

Such was the popular odium at this time against the University that the General Assembly of 1800 not only repealed the act of 1794, but, notwithstanding the strenuous exertions of some of the ablest men of the day, went further and repealed that of 1789, granted escheated property. So far as the hostile legislation affected confiscated property, it was not of much consequence, because the grant was to expire in 1804 and the courts would have forced the University to disgorge the receipts from the mortgages and liens of McCulloch. But the deprivation of escheats, if successfully carried out, would have been fatal. It would have taken away the unclaimed land warrants located in Tennessee, the proceeds of which were the interest bearing endowment prior to the University."

It is interesting to note that the University's first president, Joseph Caldwell, writing in 1804, ascribed the litigation instituted by the Trustees under the act of 1794 as the chief cause of the outbreak of hostility against the University in the General Assembly.

On the other hand, a "Gentleman in Raleigh," in a letter to a journal called *The Anthology* sarcastically laid the action of the legislature to the change in the political complexion in that body—at the time of the "Revolution of 1800," when Hamiltonian Federalism was overthrown by Jefferson and his Democratic Republicans. At this time there was a general feeling throughout the

state that the University was "strongly tainted with the virus of Federalism and Aristocracy." This "Gentleman in Raleigh" reported:

. . . When our enlightened Legislature discovered that education was inconsistent with Republicanism, that it created an Aristocracy of the learned who would trample upon the rights and liberties of the ignorant, and that an equality of intellect was necessary to preserve an equality of rights, influenced by these wise and patriotic considerations the Legislature gave to themselves again what they had before given to the University. The institution now languishes. Mr. Caldwell's anti-Republican love of literature, and not the emoluments of his office, induces him to preserve in existence and by his influence, even the shadow of a college. He is assisted by only one tutor; the funds do not permit the employment of more.

As late as June 9, 1805, Davie wrote to his friend, John Haywood, Treasurer of the state, that "the situation at the University is a distressing one, and the more so, as it is not likely to be soon capable of any Remedy, being the necessary consequence of Legislative hostility to the Institution."

His contrast of the situation in North and South Carolina and his indictment of the North Carolina legislature, on the eve of his moving to the latter state, is revealing:

. . . the friends of science in other states regard the people of North Carolina as a sort of Semi-Barbarians, among whom neither learning, virtue nor men of Science possess any Estimation. The conduct of the Legislature for several years past has stamped this character on the State and it will take a long course of Time, and contrary conduct and policy to efface the impression.

In South Carolina a Professorship is more eagerly canvassed for than a Secretaryship in the Government of the U. S., the consequence of that liberal spirit which has been displayed by their Assembly; after a handsome and permanent endowment of the offices of the Institution, they voted \$10,000., to purchase a library and Philosophical apparatus—What a contrast!! Poor No. Carolina!

The finances of the University, as might be expected, were in a deplorable condition. One of the trustees, John Haywood, reported in December, 1805, that the "present low state of the funds of the University supercedes . . . the necessity of directing the Treasurer to use every possible exertion for bringing into the Coffers of the Institution every shilling at present due and outstanding."

The University Trustees, however, having lost faith in their legislators turned to their jurists for redress. The case, *University v. Foy*, with the University as plaintiff, came before a lower court in Wilmington but was remanded to the Court of Conference in Raleigh, which was the Supreme Court of the State at that time. The high court of the state delivered the opinion that

the constitutionality of the repeal of the escheats law turned on section ten of the Bill of Rights of the State Constitution:

No person ought to be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property but by the law of the land.

The Court held that it was the purpose of the people of the newborn state in convention assembled to have some rights secured to them beyond the control of the Legislature and that for that express purpose these rights were set out in the Constitution. The preamble itself set forth the convention as an expression of the sovereign power of the people when it said:

We, the representatives of the freemen of North Carolina, chosen and assembled in Congress for the express purpose of framing a constitution, under the authority of the people, most conducive to their happiness and welfare do declare . . .

Among the mandates of this constituent assembly to the legislature was the order to provide for the election of state and county officials. No less mandatory was its order to the legislature to establish educational institutions "lest the object might escape the attention of the Legislature or be by them neglected." In fact, according to the opinion of the high court, these two objects

seem to be regarded by the framers of the constitution with equal solicitude; they have therefore in the same imperative style declared that there shall be an University, and that there shall be a governor, leaving to the Legislature to make appropriations and create such funds for the endowment of the institution as would be sufficient to effect the purposes for which it should be established.

The court then reviewed the facts of the case: the Legislature of the state in 1789 carried out the constitutional mandate and provided financial support for its maintenance by appropriating escheated lands; in 1800 the Legislature took this property away from the University and gave it back to the state.

In the opinion of the court, this repeal was not authorized by the Constitution; in fact, it destroyed the right that that instrument had given to the people of the state,

a right highly esteemed in all civilized nations, that of educating their youth at a moderate expense, a right of acquiring knowledge and good morals, which have always been deemed most conducive to the happiness and prosperity of the people.

The court further declared that corporations were established for the advancement of religion, learning, commerce, and for other beneficial purposes. When established, they acquired many rights and powers, including the election of members to take the places of those who die or resign, to sue and be sued, to purchase and hold property, and to have a common seal. The duties of these bodies consist in acting up to the design for which they

were instituted. The Constitution itself directed the General Assembly to establish the University and so it was the Constitution and not the Legislature which erected it, "the Legislature being only the agent or instrument, whose acts are valid and binding when they do not contravene any of the provisions of the constitution."

Justice Francis Locke continued:

We view this corporation (the University) as standing on higher grounds than any other aggregate corporation; it is not only protected by the common law, but sanctioned by the constitution. It cannot be considered that the Legislature would have complied with this constitutional requisition, by establishing a school for a month or any determinate number of years, and then abolishing the institution; because the people evidently intended this University to be as permanent as the Government itself.

It followed logically, therefore, that "if the Legislature can deprive the University of the appropriated and vested funds, they can do that which will produce the same consequences," because if they deprived the institution of funds already vested and refused to make any additional appropriations, "there never can exist in the State a public school or schools," and thus the Legislature could effect that purpose which it could not constitutionally do.

Actually, when the Legislature had established the University, appointed trustees, and appropriated property which they were to hold in trust for the benefit of the institution, they had discharged their duty as the agents of the people and had transferred property "which is afterwards beyond their control." And from that moment the Trustees became the agent of the people and the power of the Legislature ceased, with the discharge of the constitutional injunction; "unless it might be necessary in the course of time to make other or further appropriations to continue and support the institution."

It was finally stated that "circumstance will not make the property of the Trustees subject to the arbitrary will of the legislatures."

And thus the high court supported the arguments of the plaintiffs that the "University of North Carolina was a constitutional and not a legislative establishment" and should not "be liable to those changes which time produces in the conduct of legislatures."

Not only was this a momentous decision in regard to its effect on the University itself, but it is important as a precedent and was cited at length by Daniel Webster in his arguments to

convince Chief Justice John Marshall in the Dartmouth College Case fourteen years later. In this famous case the United States Supreme Court upheld the Dartmouth charter as an inviolable contract within the meaning of the Constitution of the United States and, based largely on *University v. Foy*, denied that a state legislature had "the power to modify or abrogate a charter legally granted in all good faith."

After a statement of the facts in both cases Webster asked "Where is the difference of the cases, upon principles?" In commending the North Carolina decision, he said:

When the court in North Carolina declared the law of the state, which repealed a grant to its university, unconstitutional and void, the legislature had the candor and the wisdom to repeal the law. This example, so honorable to the state which exhibited it, is most fit to be followed on this occasion.

In a scholarly article, entitled "North Carolina's 'Dartmouth College Case,'"¹ Dr. Edgar W. Knight summarized the significance of the two cases:

Quite apart from the relation between the North Carolina case in 1805 and the Dartmouth Case in 1819, the arguments of counsel and the opinion of the court in the earlier case throw an interesting light on the history of higher education in this country, and read now, after nearly a century and a half, those arguments and that opinion appear very significant. Rarely will one find in the materials of educational history such compelling logic for state support of higher education as is found in the case decided in North Carolina in 1805.

Four years after the reestablishment of escheats to the University, the General Assembly, no doubt impressed with the reasoning in the case of *University v. Foy* passed an act entitled "an act in aid of the University." Its preamble declared that "the State possesses certain funds from which no profit is yielded, but which by the zeal and activity and united exertions of the Trustees of the University, might be rendered productive." The act itself transferred derelict personal estate to the University by enacting a law that the Trustees of the University were authorized to collect from any executor or administrator of a deceased person "all sums of money, or other estate of whatever kind, that may be in the hands of such executor or administrator, that has remained or shall remain for seven years . . . unrecovered by the creditors, legatees or next of kin of the Testators or Intestate;" and if no just claim should be preferred within ten years, then it was to be held absolutely "for the benefit of the University." The Trustees were also authorized to receive all debts, dues, and demands which have accrued to the State on or before December 31, 1799.

1. *Journal of Higher Education*, XIX (March, 1948), 116-122.

In addition then to being the recipient of escheats, the University, as a result of this act, was to be the recipient of all derelict personal estate. Incidentally, this latter source of revenue had, since an act of 1784, been taken from the church wardens and the vestry and appropriated by the state.

This same year, 1809, in order more thoroughly to realize all escheats, the Trustees divided the state into ten districts with an attorney over each. These attorneys were naturally the friends of the University and included such men as Lewis Beard of Salisbury, Samuel R. Jocelyn of Wilmington, Archibald De Bow Murphey of Hillsboro, and John Whitaker of Halifax. Moreover, any two Trustees, with the attorney so appointed, were authorized to comprise all litigation over escheated property. It is interesting to see how these attorneys were instructed to operate: They could select three dis-interested freeholders to evaluate the land in question. It might then be sold on credit for from one to three years, with a six per cent discount allowed for a cash sale. The attorneys themselves were allowed a three per cent commission for selling the land and a two and a half per cent commission for collecting and turning over the money.

In cases where there were adverse claims, or where it might be difficult to determine to whom the property properly belonged, or where there was no claim of any kind, the attorney, after giving sufficient notice, was to sell the property at public auction. The attorneys were also to make annual reports.

Despite the interest of the Trustees in acquiring property by escheats, they were fair and liberal in deciding moot questions. For instance, in December, 1810, it waived its rights to the property of one James Braley, a native of Ireland, who had acquired three tracts of land in Iredell County before he became a naturalized citizen of the United States. Again, during the same meeting, the Trustees relinquished their claim to a plantation in Lenoir County which had been inherited from an uncle by John R. Donnell, a native of Ireland.

No doubt the Trustees felt that virtue had been rewarded when, on December 15, 1825, John Haywood, chairman of the Land Committee reported that 12,368 acres of land in Tennessee had been sold for the sum of \$43,869.10, which was, needless to say, a large sum for that day.

Moreover, by July 1830, James Iredell, Jr., chairman of the committee "to examine into the actual State of the Institution with respect to its debts and its resources" was able to report

that bonds due from the purchasers of lands in Tennessee already in the hands of the University's agent amounted to \$71,081.28. He furthermore reported that the University still held 106,051 acres in Tennessee, comprising the land warrants and the lands conveyed to the University by Benjamin Smith and Charles Gerrard. The value of these lands had been estimated at \$240,642 in 1820 and 1822, but he felt that the real value was "probably much less than the sum just mentioned."

It was also estimated at this time that the annual average receipts from the western lands for the past four years amounted to about \$6,000, "subject however to large deductions for the expenses of collection, the cost of defending suits, the payment of Taxes, and other expenses incidental to an agency in Tennessee."

Yet the debts of the University were still so far in arrears that it was deemed necessary in 1830 to present a memorial to the Legislature, praying for a loan. Accordingly, Thomas Ruffin drew up a lengthy petition "setting forth a full and true account of the present Condition and future prospects of the University." Ruffin reviewed briefly the financial history of the University, pointing out the amounts which had been realized from arrearages due to the state from receiving officers up to January 1783 (which amounted to \$2,706.41), the loan in 1791 of \$10,000 (which was subsequently converted into a gift), grants of certain confiscated estates, a grant in 1809 of all derelict property, and a grant of two lotteries (from which \$5,080.00 was realized).

And then he turned to the question of escheats, with the following remarks:

With these exceptions, this great and useful School was established and has been supported for nearly forty years by funds derived from escheated estates, and the donations of beneficent and patriotic individuals, influenced by a zeal for the morals, learning and liberties of the state.—

In 1789 the grant of escheats was as expected and intended by the able and virtuous Legislators who chartered the Institution, a gift of real value; from which frequent and large sums were derived. The departure from the Country and death abroad of that portion of the inhabitants who adhered to the cause of the Mother Country, and the distruction [sic] of life by the hardships and battles of the Revolution, left many estates without owners. The recent connexion of the State with a European Government and its commercial dependence, had brought many natives of Great Britain and the Continent to our Country, who adopting it as their own, lived and died amongst us, leaving only alien heirs, whom our laws most properly excluded from inheriting.—But the income derived from the source is, at this day, reduced to almost a nominal sum.

Moreover, Ruffin pointed out that this source of revenue was greatly curtailed by the act of the Legislature which let in a

remote heir, being a citizen of this country, notwithstanding the existence of a nearer alien heir; and by another act which conferred all the estates, both real and personal, on the widow of an Intestate leaving no heir of his blood. "In point of fact," he continued, "the College finds in Escheats in North Carolina no resource, although Vigilant and faithful agents are appointed in nearly every part of the State."

He further stated that "no immediate expectations are to be indulged of funds being derived from the Western lands," because recently, "many persons who are or pretend to be the Heirs of the deceased soldiers claim in that right a conveyance of the land."

He hoped, however, that "the present depression in the funds and in the number of students to be temporary only; and that by slight exertion of the fostering care of the Legislature, this Institution . . . may be revived." He optimistically predicted, moreover, that if its right to the escheated property in Tennessee were favorably settled, the prosperity of the University would be fixed "almost beyond the reach of mischance and certainly above the necessity for further appropriations from the Treasury." Unfortunately, the Legislature was not willing at this time—or for decades to come—to make this "slight exertion," and the University was still left to its own devices.

A most revealing report was laid before the Legislature by Governor Edward Dudley in 1840 at the request of the two houses. The resolution called for an exhaustive report of the receipts and expenditures of the University since its establishment.

In this half-century report (which was prepared by President David L. Swain and Charles Manly, later governor), Governor Dudley noted that, with the exception of the 10,000-loan (later converted into a gift), the grant of confiscated estates (which was revoked in 1804) and the donation of arrearages and debts due to the State (which proved nearly unproductive), "this great and useful school was established and has been supported, since the 12th February, 1795, until the present time, by funds derived from *escheated estates*, and the donations of beneficent and patriotic individuals, influenced by a zeal for the morals, learning and liberties of the State."

Governor Dudley further pointed out that it was "impossible . . . to ascertain and designate, at present, the various kinds of property received by the Trustees since 1789 . . . and particu-

larly, the amount and description of all the property that has escheated to the Institution, during a period of more than half a century." Nevertheless he presented the following report on the total receipts of the University:

The aggregate amount of receipts into the Treasury of the University, from the 15th November, 1790, to 20th November, 1840, is composed of the following items, viz:	
From the sales of lands in Tennessee, acquired under the laws regulating escheats, and of 33,000 acres acquired by donation and devise,	\$195,294.82½
" The sales of lots in Chapel Hill, and other lands in North Carolina,	13,520.00
" Profits on two lotteries,	5,080.80
" Donation from the State,	10,000.00
" Subscriptions obtained in 1796, viz: in Hillsborough Dist., \$1,717.40—Halifax Dist., \$1,608—Newbern Dist., \$950—Fayetteville Dist., \$190—Wilmington Dist., \$2,022	7,684.40
" Dividends on Bank Stock,	33,028.50
" Tuition fees since July, 1804,	111,581.91
" Subscriptions obtained by Doct. Caldwell, in 1809 and 1810,	10,535.00
" All other sources—escheats in N. C.—balances unclaimed in the hands of executors and administrators—arrearages, interest, confiscated estates, subscriptions, &c.,	134,066.99
	<u>\$520,782.42½</u>

By the addition of the first, the sixth, and the last items in this report, it will be seen that for the first thirty years of the University, money derived from escheats, totalling \$362,390.31½, amounted to over 69 per cent of the total revenue of the University.

At the close of the next decade—in 1850—another comprehensive report was prepared on the status of escheats by a committee appointed by the Board of Trustees. This committee, headed by Barthelomew Figures Moore, a life-time friend and benefactor of the University, and assisted by David L. Swain and John H. Bryan, was to make an inquiry "whether it was expedient for the University to surrender back to the State the franchise of escheated property, and if not, to devise a more efficient system for managing it." The inquiry itself, according to the report, was instigated by those citizens who insisted that the franchise should be surrendered "first, because the University is rich and does not need it, and secondly, because the small income derived from it is countervailed by the prejudices in the public mind."

After a detailed recapitulation of the Escheat Act of 1789 and its later additions and judicial modifications, the committee, in reply to the first part of the inquiry, were of the opinion that

the University was entitled, under the acts of 1789 and 1809, to "all real and mixed estates which come back to the sovereign for want of an individual owner" and to "all personal estate which comes into the hands of executors and administrators, for which there is no claimant, after seven years from the grant of letters."

As to the expediency of surrendering the franchise the committee were of the opinion that it was "of great value" and that "to it we are principally indebted for the establishment and maintenance of the Institution." To opponents of the franchise, the committee replied that the endowment of the University was not "a munificent one," though the University at that time was in "an unusually prosperous condition." It pointed out, however, that the "whole receipts from its endowment, nevertheless, are small in comparison with the sums received by the Universities of Virginia, Alabama and Georgia, and less than half the amount of the direct grant from the Treasury to the South Carolina College."

Finally, the committee recommended that a more efficient system be inaugurated for the collection and management of escheated and derelict property. The system heretofore, they maintained, was defective, because the number of escheators employed was too small and especially because there was not "an Efficient Head." To correct this situation they recommended that the Treasurer of the University be appointed "principal Escheator for the State" and that he be authorized to appoint "a suitable person in each County Escheator for such County."

The Board of Trustees concurred with the report and ordered its Executive Committee to carry out the details. As a result, the Treasurer became "Principal Escheator, or Escheator-General," at a salary of \$1000 per year and county escheators, who were to receive 10% of their receipts as compensation, were appointed for each county. These county escheators were to make "diligent inquiry as to escheated lands and examine inventories, wills and settlements to ascertain if any rights have accrued to the University, and report progress by October of each year."

About the time of this reorganization, a large escheat appeared on the horizon about which "golden hopes were kindled," according to Dr. Battle. It seems that soon after the Revolutionary War, there was a great deal of speculation in the western, mountain counties of the state. Among the speculators was David Allison of Philadelphia who bought from the state an

immense area in Cumberland, Buncombe, Henderson, and Haywood counties. When he died without heirs, the University claimed his interests. But in the meantime, the heirs of one Robert Love contested the claim. A great deal of litigation ensued which resulted in a compromise by which the litigants became tenants in common of thousands of acres, the number of which was totally unknown. After the Civil War this property was sold under the decree of the Circuit Court of the United States. From this sale, the University derived about \$13,000 as its share. At the time the Trustees supposed it to contain about 10,000 acres. A later survey showed it amounted to about 70,000 acres. Needless to say, the purchaser sold at a great profit and made over 300% on the deal.

A blow of a more staggering nature came in January, 1851, when the General Assembly, from an "alleged desire to help the public schools," enacted that all sums of money or other estate, in the hands of executors or administrators, unreclaimed in four years from their qualification, should be paid over to the President and Directors of the Literary Board for purposes of "common school education."²

Not content with this diversion of funds from the University, the Assembly ratified, on the same day, an act which transferred all property that shall hereafter escheat to the state to the President and Directors of the Literary Fund. This property was to be held in trust for the use and benefit of this fund.³

The constitutionality of the first act was contested by the Board of Trustees in the case of *University v. Josiah Maulsby et al.* (8 Iredell Eq. 231) which came up to the Supreme Court of the State on appeal from the Court of Equity of Columbus County. Trustees John H. Bryan, W. H. Haywood, and B. F. Moore were employed by the Board to argue the case. Despite their arguments as to the unconstitutionality of repealing the acts of 1789 and 1809, Chief Justice Thomas Ruffin upheld the 1850 act on the grounds that "the University is a public institution and body politic, and hence, subject to legislative control." While the court admitted that "charters of corporations, founded by individuals, on their own funds, either for their own emolument, or for the purposes of education, or other general charity, are contracts of inviolable obligation," it contended that "the University was founded by the State, on the public funds, and

2. *Laws of N. C., 1850-51*, Ch. 62.

3. *Ibid.*, Ch. 90.

for the general public charity, and that the University was a corporation which "was not only originally the creature of the Legislature, but it is absolutely dependent on its will for its continuing existence." It followed, therefore, that "there cannot be an instance of a corporation more exclusively founded by the public, more completely the creature of public policy, for public purposes purely, than the University of North Carolina." Hence, it ruled, the Literary Board was entitled to receive the fund in the defendant's hands.

With the legislature and the courts against them, the Trustees did not remain idle. At their December meeting in 1853 the recent acts of the Assembly and the case of *University v. Maultsby* were brought up. After Governor Swain delivered "an argument of great force, impugning the constitutionality of the acts and the legality of the decision," the Board appointed Swain, John H. Bryan, and Patrick Winston as a committee to prepare a plan by which the questions referred to could be brought before the Supreme Court of the State, and, of the United States, if necessary.

Not content with this, in December, 1854, they appointed B. F. Moore, James W. Bryan, President Swain, and, ironically enough, the same Chief Justice Ruffin who had handed down the withering decision in *University v. Maultsby*, as a committee to memorialize the General Assembly upon the subject of restoring the escheats to the University. So "eloquent and interesting" was the address of Governor Swain in the House of Commons that 1000 copies were ordered to be printed by the Board.

As a result of their concerted actions—and those of other friends of the University—the Assembly saw fit to repeal the acts of 1850 and return escheats to the University in December, 1854.⁴

Among many others, President Swain was "greatly gratified by the restoration of Escheats and derelict property to the University" and felt that the number of escheators should be increased so that at least there would be one "in every populous and wealthy county."⁵

In the 1850's little was derived from escheats. In fact, the faculty minutes have scant entries regarding the subject. For

4. *Revised Code of North Carolina, 1854*, Ch. 46, sec. 27 and Ch. 114, secs. 11 and 12. It is worthy of note that Calvin H. Wiley, Superintendent of the Common Schools of North Carolina, reported to the Treasury of the Board of Trustees February 26, 1855 (University Papers) that "No funds came into my hands of any sort, from escheats, or were directed through me to the Lit[erary] Board."

5. David L. Swain to [?], February 10, 1855. University Papers, Southern Historical Commission, Chapel Hill, North Carolina.

instance, in December, 1860, the Board received \$1,452.93 as derelict funds from the estate of one Catherine Alberti. The next entry in regard to escheats does not appear until December, 1862, when \$75.00 was realized from the sale of a small tract of escheated land in Chatham County. The following December they also received a total of \$4,874.93, which amounted to almost one-sixth of the total revenue for the year. In 1864 they received \$5,162.25 from this same source, representing about one-seventh of the total revenue. And even the last year of the war the University received \$2,275.00, derived from rent from "certain Houses and Lots in Raleigh late the property of John Kane & claimed for the University as escheated property." Later the property of this alien was claimed by a sister and had to be turned over to her.

At the meeting of the Board in December, 1866, a memorial was prepared to be addressed to the General Assembly wherein it was stated that "at the outset of its career it was endowed with such property as might come to the State by escheat—a resource which for a while was very productive, but now has become both scanty & uncertain." Moreover, the "very respectable sum" which had been gradually accumulated from this and other sources had been "swept utterly away" by the Civil War and the University did not have "the means to sustain its life." Incidentally, the Assembly saw fit to appropriate the sum of \$7,000.00 for part payment of the faculty and other officers of the University. In July, 1868, the Treasurer, Charles Manly, reported \$150.00 derived from escheats for the previous year.

Two years later, in 1870, the forces of Reconstruction closed the doors of the University for five years.

Chapter II

Escheats: 1875—1937

In 1875 when the doors of the University were reopened upon a scene of desolation, the state gave nothing for re-equipment, rebuilding, or rehabilitation. Instead, it had to fall back upon the generosity of its friends and alumni (who contributed \$18,700), a \$7,500 annual grant from the Land Scrip Fund (which was taken away in 1887), and the income from escheats. The last-named had been regranted by the Constitution of 1868. In the section devoted to "Benefits of the University," the Constitution stated that "The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University."

Shortly thereafter, General Rufus Barringer, County Escheator of Cabarrus County, reported the collection of \$1,500 from escheated property. This amount, to which \$16.80 was added from another source, lacked only \$101.20 from being as much as that derived from tuition for the year.

The next few decades saw little money derived from escheats. For instance, the President, Kemp P. Battle, reported in 1880 that only \$841.00 had been derived from this source during the preceding year. No further reports were made to the Board concerning escheats until February, 1893, when the "Nett Escheats" were reported as \$1,081.60, followed by the comment of R. H. Battle, Treasurer of the University, that "The aggregate receipts from escheats have been much larger than the average in former years: and we cannot expect such an income from that source hereafter. The escheators appointed by me in different counties having been urged to look up escheated property, unclaimed distribution shares, some time since."

How true was this prediction is borne out by the fact that the "Nett Escheat" for the following year amounted to only \$95.72. For the year, 1894, however, the net sum of \$949.25 was realized from this source, and for the following year it rose to

\$1,584.43. For the year 1896 it dropped back to \$593.27 and for the year 1897 it was only \$196.25.

The net escheats for the succeeding thirteen and a half years were as follows:

Jan. 1, 1898—Jan. 1, 1899	\$ 617.78
Jan. 1, 1899—Jan. 1, 1900	239.30
Jan. 1, 1900—Jan. 1, 1901	2,107.32
Jan. 1, 1901—Jan. 1, 1902	874.55
Jan. 1, 1902—Jan. 1, 1903	1,924.20
Jan. 1, 1903—Jan. 1, 1904	1,134.00
Jan. 1, 1904—Jan. 1, 1905	1,678.40
Jan. 1, 1905—Jan. 1, 1906	1,143.82
Jan. 1, 1906—Jan. 1, 1907	2,250.29
Jan. 1, 1907—Aug. 15, 1907	2,485.46
Aug. 15, 1907—Aug. 15, 1908	1,395.20
Aug. 15, 1908—Aug. 15, 1909	500.64
Aug. 15, 1909—Aug. 15, 1910	385.68
Aug. 15, 1910—Aug. 15, 1911	1,118.42
Total	<u>\$17,855.06</u>

For this period of 13 years and 8 months the average amount gleaned from escheats—the great percentage of which was derived from unclaimed money in the Clerk's Office of the Superior Courts—was \$1,303.29, which was a fairly small percentage-wise portion of the general fund of the University.

During this period, the Board was magnanimous in its surrender of claims to escheated property where other worthwhile interests were at stake. For instance, in 1907 a memorial was presented to them by citizens of Milton, North Carolina, for a quit-claim deed from the University for a lot in that town known as the "Academy Lot." The lot in question had been given by its former owner many years ago to local trustees for school purposes, but the trustees had all died and there was no record of the deed. The petitioners guaranteed they would hold such lot as originally provided for school purposes. The Board of Trustees accordingly granted a deed from the University without warranty for any interest the University might have, by way of possible escheat.

There were no entries for escheats in the Treasurer's reports to the Board for August 15, 1911 until August 15, 1914, at which time the sum of \$11,013.96 was reported for the preceding fiscal year. It is interesting to note, however, that President Francis P. Venable (1900-1914) reported to the Executive Committee in December, 1912, that he had written to all the Superior Court Clerks in the State in regard to escheats and that the average amount received from this source usually was about \$500.00.

At this time the Board also ordered that all receipts from escheats be kept as a separate fund, to be invested by the Finance

Committee. President Venable also stated that deeds signed by himself and two members of the Board had been given for property in Scotland and Chowan counties, as a result of which the University had realized \$7,250.00

In August, 1915, the sum of \$5,047.62 was reported from escheats, but during the remainder of President Edward Kidder Graham's administration (1914-1918), there was nothing in the Trustee Minutes in regard to escheats, with one exception: The Executive Committee passed a motion that the Treasurer of the University should be instructed to keep a separate book in which a complete record of all sums received by the University from escheats be entered.⁶ A loose report, filed among the unclassified miscellaneous papers (1916-1949) of the University volumes (manuscript) in the Southern Historical Collection reveals that on August 15, 1917, only \$306.66 was derived from escheats for the preceding fiscal year. Worse than that, sundry escheats, amounting to \$359.95, had been returned, thus bringing the balance of the fund down to \$6,939.91.

The next entry, as a matter of fact, in the Trustee Minutes was a statement that President Graham laid before the Executive Committee a letter from Mr. A. W. McLean suggesting the advisability of the University's appointing in each county in the State a representative to look after the University's interests relative to escheats. At that time it was ordered that this matter be left to the President of the University and to Mr. Victor Bryant, Senior, the Escheator General, who died in 1920 and was succeeded by Joseph B. Cheshire, Jr., of Raleigh.

One other glimpse of the escheats picture in this period is revealed by the Treasurer's statement of the Escheats Account (filed loosely among the above-mentioned miscellaneous papers) which stated that on December 31, 1920, the account amounted to \$4,878.83, of which \$4,759.31 was transferred to the Improvement Fund.

It was at this time that there occurred one of the most exciting—and disappointing—cases in the history of escheats to the University: the escheat of the estate of one John Neal. The facts of the case were presented to the Executive Committee of the Board of Trustees August 4, 1921, by Joseph B. Cheshire, Jr., the Escheator. It seems that John Neal, a native of Winston-Salem and an employee of R. J. Reynolds Tobacco Company, had died in Omaha, Nebraska, on August 20, 1920, leaving an estate

6. An exhaustive search of University files, however, has failed to reveal that this motion was ever carried out in this period.

of about 700,000.00 with stocks and securities which were in Winston-Salem. At the time of his death, no will could be found. A few days later, one Shotwell, a lawyer of Omaha, applied to the Probate Court there to have a carbon copy of an alleged will of the deceased probated. The carbon copy was not signed, but there was an attesting clause (which was also a carbon copy) in the usual form, pinned to the alleged will and signed by three respectable persons of Omaha as witnesses. The alleged will left about \$250,000.00 or more in stocks to Shotwell and his daughter, whom John Neal had known only about three months prior to the time the will was purported to have been made.

Mr. Cheshire was informed that the Probate Judge in Omaha had refused on several occasions to allow the will to be probated and that the proceeding there was still pending.

Meanwhile Shotwell had alleged that the original of this will was executed in his office after having been prepared by him at the request of Neal in March, 1920, and that the original had been taken by him, his brother, and John Neal to the Probate Clerk at Omaha, where it was filed for safe keeping, after a receipt therefor had been given to Neal. There was absolutely no trace of the will ever having been in the office, and the clerk had no recollection of it whatsoever. Moreover the three witnesses whose names appeared on the carbon copy asserted that they had witnessed *a will* for Neal at the time stated, but they did not know the contents thereof or whether the sheets pinned to the paper they signed were the same as the will they executed.

In addition to the \$250,000.00 or more left to the two Shotwells, the alleged will left \$300,000.00 or more to the Oxford Orphanage at Oxford and Children's Home at Winston-Salem, North Carolina. It had been proven in common form in Forsyth County, North Carolina, and the Wachovia Bank and Trust Company had qualified as Executor.

Mr. Cheshire and his advisers were of the opinion that the will could not stand.

Before the University took any steps in the matter, however, two alleged widows of Neal, one with a son, and two alleged mothers of Neal had been heard from. One alleged widow and one alleged mother had employed counsel and had stated that they would fight the will. The other alleged widow had the public administrator of Forsyth County file a caveat to the will.

A committee of the Trustees of the University, composed of Judge James S. Manning, R. A. Doughton, and Judge W. P.

Bynum, was appointed in January, 1921, to act upon the matter. After employing Parrish and Deal, Attorneys of Winston-Salem, a caveat to the will was entered. The committee resolved, however, that should it recover the estate as an escheat, it would "do the absolutely just, generous and equitable thing by the two Orphanages and give them outright what we believed John Neal intended to give them."

Mr. Cheshire therefore recommended to the Trustees that they approve the filing of the caveat to the will and the resolution in regard to the orphanages. After a prolonged debate upon both recommendations, the Board, in executive session, re-referred the matter to the special committee with full power to act.

How disappointing was the laconic report to the Board on June 12, 1922: "Any claim which the University may have to the estate of the late John Neal has been practically abandoned!"

For some strange reason, it was not until 1922 that income from escheats were again listed in the Treasurer's Report to the Board, or even in the estimated income of the University for the coming year, except that in June, 1919, there was listed an estimate of \$4,500.00 which would probably be derived from this source.

Beginning in 1922, however, a renewed interest in escheats was manifested by the Board of Trustees and by Mr. Cheshire, the Escheator General. In January of that year a motion was made by Dr. Charles Lee Smith (and carried) that the Escheator should be directed to make enquiry of the treasurer and clerk of the court of each county to determine the total of such unclaimed funds in the state that accrue to the University either in fee simple or as trustee during the lifetime of possible claimants or the heirs of such claimants and demand that such funds be turned over to the University, and that Judge J. S. Manning, President Harry Chase, and Mr. Cheshire be appointed a committee with authority to take such action in carrying this out as they may be advised.

In November, 1922, Dr. E. C. Brooks moved that a committee of three be appointed to have charge of the collection of unclaimed moneys in the offices of the clerks of the courts in the various counties of the state and to make such arrangement in this matter as would be to the best interest of the University. The chair appointed Col. J. Bryan Grimes, Dr. E. C. Brooks, and Mr. Walter Murphy on the Committee.

In January, 1923, Mr. W. N. Everett was appointed to fill the vacancy of Col. Grimes on the Committee on Escheats.

On June 12, 1922, Mr. Cheshire reported to the Board that the records he had been able to secure from the estate of the late Victor S. Bryant, the former Escheator, "were very meager." He further reported that he and the Honorable James S. Manning had employed Mr. Walter H. Grimes, of Raleigh, to go around and examine the offices of various clerks of the Superior Courts of the State, to determine what funds in their hands might be claimed by the University. Mr. Grimes, he reported, was "an ideal man for this work and had been . . . very tactful and successful therein" and recommended that he be continued in this capacity, to be allowed, as before, 23% of the amounts he secured—provided this amount did not exceed \$3,000 in six months. Also the Escheator would claim only 2% for his trouble on the amount collected by Mr. Grimes—instead of the usual 5%. The net proceeds for the fiscal year amounted to \$5,062.72.

As a result of Cheshire's recommendation, Mr. Grimes was accordingly commissioned to continue his employment on the 23% basis, plus traveling expenses. The following January, 1923, Mr. Cheshire was able to report, as a result of Mr. Grimes' work, the net sum of \$4,822.50 collected from clerks of the Superior Courts in the State. The following June, however, due to the sickness of Mr. Grimes, only \$1,036.42 was reported. In January, 1924, Mr. Walter Murphey called attention to the death of Mr. Grimes and suggested that a new committee be appointed to handle the matter of escheats. As a result, Mr. Murphey, Mr. W. N. Everett, and Mr. Charles Whedbee were appointed to the Escheats Committee.

Under the direction of Mr. Cheshire, receipts were again reported regularly to the Board of Trustees. These reports, from January, 1922, to February, 1938, revealed the following net escheats, the great majority of which were derived from clerks of the Superior Courts:

June 1922	\$ 5,062.72
Jan. 1923	4,822.50
June 1923	1,036.42
Jan. 1924	2,000.11
June 1924	1,930.83
June 1925	1,105.94
July 1926	941.65
June 1927	1,308.20
Jan. 1928	1,385.29
Oct. 1928	1,089.05
May 1929	1,545.37
Jan. 1930	1,093.55

Dec. 1931	1,162.36
Mar. 1932	1,339.72
June 1933	1,271.13
Jan. 1934	1,151.04
Feb. 1934	1,922.64
May 1934	2,408.88
Jan. 1935	950.29
June 1935	4,354.25
Oct. 1935	540.09
Jan. 1936	985.48
Apr. 1936	2,280.00
June 1936	12,763.15 ⁷
Oct. 1936	2,400.92
May 1937	2,114.96
Jan. 1938	4,467.49
Feb. 1938	661.68
	<hr/> \$64,095.71

For this period of approximately sixteen years, during which Mr. Cheshire served as Escheator, an average of \$4,005.98 was derived from Escheats. After making this final report, Mr. Cheshire resigned as Escheator and received the thanks of the Board of Trustees for his many years of valued service.

As a matter of fact, Mr. Cheshire appears to have been the first Escheator to go deeply into the problem of unclaimed dividends on stocks of North Carolina corporations—which was later to be a source of much revenue. In June, 1927, he reported to the Trustees that Frank Nash, the Assistant Attorney General of North Carolina, had given an opinion that the University was entitled to unclaimed dividends on stock of North Carolina corporations when such dividends have remained unclaimed by the stockholders in the hands of the corporation for five years. Meanwhile the treasurer of the Atlantic and North Carolina Railroad had reported on hand \$2,946.75 unclaimed dividends, for which Mr. Cheshire made demand. Mr. Cheshire felt, however, that the question had been decided against the University by the decision of the Supreme Court in the case of *University v. Railroad*, 76 N. C. 103. The Escheator's Committee (as it was then called) composed of Murphy, Whedbee, and Everett were given authority to act on the recommendation.

In 1929 another means of collecting escheats was suggested. In September of that year the Executive Committee passed a resolution requesting that the Committee on Escheats, consisting of Messrs. Murphy, Whedbee, and N. A. Townsend confer with C. M. Johnson, Executive Secretary of the County Government Advisory Commission, as to the advisability of having the

7. This sum came largely from the escheat of the estate of E. L. Carter of Forsyth County. Before the necessary disbursements, it amounted to \$15,667.51.

county auditors report on escheats due the University in the various counties.

It was also at this same meeting that Mr. Townsend made a most significant motion when he proposed that all such escheats as are collected should be used in the student loan fund, subject to any legal requirement. The motion was carried, but action was not carried out.

Two years later, in April, 1929, Mr. Walter Murphy, reporting from the Escheats Committee, consisting of himself, Mr. W. Lunsford Long, and Mr. Charles Whedbee, recommended to the Executive Committee of the Board the employment on a ten per cent basis of a suitable person to be selected as the Escheator, to secure monies in the office of the clerks of the courts due the University from escheats. This recommendation was adopted and the Escheats Committee was authorized, on the motion of Governor Cameron Morrison, to make such a contract for one year at a time.

Unaccountably enough, several years lapsed before this device was pursued, though there were repeated efforts on the part of Mr. Cheshire and the Escheats Committee to carry out this plan.

Meanwhile President Frank Porter Graham presented to the Board in September, 1932, a recommendation for a legislative act requiring all clerks of the court to report to the escheator and that unclaimed freight and bank deposits be also reported to him. This matter was referred to the Committee on Escheats, which was appointed at that time by the Governor. This committee was composed of A. B. Andrews, Chairman, Kemp D. Battle, and Charles G. Rose. The following June, R. E. Little of Wadesboro (the present chairman) was added to the committee.

Finally, it was reported in January, 1934, that the matter of unclaimed bank deposits had been placed in the hands of Charles T. Woollen, Business Manager of the University, and—at long last—a man had been secured to visit and audit the offices of the Clerks of the Superior Court throughout the State, Mr. Thad Eure, the present Secretary of the State of North Carolina.

Mr. Eure reported at that time that he had "collected and turned over to the University the sum of \$7,363.40, besides making a great many investigations leading to future receipts from escheats." On the motion of Mr. Little, Mr. Eure was continued as a special agent. As a result, in January, 1935, Mr. Eure reported that he had spent the last year "making investigations,

visiting the various Clerks of the Superior Court, checking schedules of liquidated banks, and audits of various State Institutions and State Departments." He had, as a matter of fact, visited all the counties of the State, and he submitted a report by counties, showing a total of \$24,982.45. Together with his former collection, the two reports aggregated \$32,345.84. Of this, \$8,297.54 represented amounts he had collected in the form of unclaimed liabilities of liquidated banks which was paid over by virtue of Ch. 546, Public Laws of 1933. The remaining \$22,957.70 represented items collected from offices of Clerks of the Superior Court.

Mr. Eure pointed out further that from October, 1925, to September, 1933, a period of eight years, "the escheats receipts as indicated by a report to me from the Treasurer of the University, aggregated \$16,955.91. Since that date, in a period of 15½ months, I hold receipts from the University aggregating \$32,345.84, as indicated in this report." In other words, during his employment, he pointed out he had "collected and turned over to the University twice as much money as it had received from the same source covering a period of eight years, and, for the information of the committee, the total cost to the University has been less than 19%, namely \$6,072.67."

The following January 31, 1936, Mr. A. B. Andrews, Chairman of the Escheats Committee, presented the final report of Mr. Eure, which revealed that, since his employment, his total collections which had been turned over to the University aggregated \$77,193.53. Of this amount, \$44,847.69 had been collected since his last report. Of these, \$47,579.18 represented balances from unpaid schedules of unclaimed liabilities of closed banks filed in the offices of Clerks of the Superior Court.

Mr. Andrews also announced a plan had been worked out with the State Banking Department whereby its cooperation had been received relating to escheat revenue from dormant and unclaimed accounts in the active State Banks. Moreover, he announced that Mr. Gurney P. Hood, Commissioner of Banks, was of the opinion that the University should receive approximately \$150,000.00 from this source.

Even before the resignation of Mr. Cheshire in January, 1938, and after the resignation of Mr. Eure, who was elected clerk of the House of Representatives, the Escheat Committee had employed Mr. Kemp S. Cate, then employed in the Comptroller's Office of the University, and Mr. R. C. Maxwell, special agent

from the Attorney General's Office, as part-time "Escheat Agents." As a result of their activity, Mr. Andrews was able to report to the Board in May, 1938, that for the calendar year January 1, 1937 to December 31, 1937, the University had received the following sums:

J. B. Cheshire, Escheator	\$ 2,114.96
J. A. Warren, University Treasurer	10,935.54
K. S. Cate, Escheat Agent	30,451.86
R. C. Maxwell, Escheat Agent	5,888.05
	<hr/>
	49,390.41
Other income—Interest	2,435.40
	<hr/>
	\$51,825.81

Thanks to the energy and vision of Mr. Cheshire, the Escheats Committee of the Board of Trustees, and the industry of those employed, the Escheats Fund was well on its way towards playing once more a significant part in the history of the University.

Chapter III

Escheats: 1937-1955

Perhaps this new awakening as to the possibilities and potentialities of the Escheats Fund was a part of the over-all picture of progress at the University. Under President Harry Woodburn Chase (1919-1930), there was a rapid physical expansion, a great increase in enrollment, and the attainment of an international reputation for high standards of scholarship and freedom in research and teaching. Under President Frank Porter Graham (1930-1949) this progress was continued. Along with it came in 1932 the administrative consolidation of the University of North Carolina at Chapel Hill, the North Carolina College for Women at Greensboro, and the North Carolina State College of Agriculture and Engineering at Raleigh into the University of North Carolina.

As for escheats, it is significant that, upon the recommendation of Mr. A. B. Andrews, the Escheator's office was located with that of the treasurer of the University at Chapel Hill. Under this plan, escheat matters would be largely worked out and handled by the business office of the University at Chapel Hill.

Despite the fact that the Board of Trustees had voted in 1927 to allocate all moneys arising from escheats to the student loan fund, President Graham requested authority to transfer the pre-consolidation funds for other purposes. In May, 1940, he reported to the Board that, with the desire to round out the Kenan Endowment to \$2,100,000.00, he had had a discussion with Mr. William R. Kenan. Mr. Kenan "had been delighted at this interest on the part of the University in building up this fund." Consequently, President Graham requested authority to transfer funds from those escheat funds accruing before the consolidation of the University as follows:

1. \$43,000.00 to the Kenan Endowment
2. \$20,000 to the Southern Historical Collection Fund
3. \$21,724.91 to Chemistry, Botany and Zoology

The Board unanimously approved this disposition of the Escheats Fund, but, in the discussion of the transfer of \$43,000 from the Escheats Fund, there was "an interchange of information and figures" between President Graham and Mr. R. E. Little. Mr. Little was "particularly interested in protecting the principal of the Escheat Fund," but "expressed himself as satisfied with

the transfer of this amount of money provided, the purpose for which the Escheats Fund is designated, is preserved."

At the same meeting, President Graham requested and obtained permission to transfer \$50,000 from the Post-Consolidation Escheats Fund as an investment in a building at State College to be used in connection with agricultural work.

In June, 1940, Mr. Little also made an informal report on Escheats, in which he stated that \$32,000.00 had been collected that year at the cost of six per cent and that the fund was paying its own expenses and earning some income.

The following June, Mr. Andrews made a more elaborate report for the eleven months covering the period July 1, 1940 to June 1, 1941. He disclosed that \$33,253.71 had been received, with disbursements amounting to \$3,924.44, and stated that "the Escheat Fund is getting on a basis that will carry itself." The balance sheet showed that the value of the fund was \$255,741.29, "all of which has been accumulated in the eight years' time since the consolidation of the three units of the Greater University of North Carolina." He pointed out, moreover, that a net amount of \$957.13 had been derived from dormant bank accounts.

In January, 1942, Mr. Little made another brief report on Escheats and stated that this fund was then bringing in about \$2,000.00 monthly.

In recent times, it appears that the year 1937 was a turning point in the history of escheats. In that year, through the great efforts of the Chairman of the Escheats Committee, Mr. A. B. Andrews, Mr. R. E. Little, and Mr. Charles T. Woollen, Comptroller of the University, an act was pushed through the Legislature March 23, 1937, which was of great significance to the fund. The act (*Public Laws of N. C., 1937, ch. 400*), entitled "An Act to Declare Certain Unclaimed Bank Deposits Derelict Property and Provide for Payments to the University of North Carolina," declared that "all bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto." The act further provided that "if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely." There was also an important proviso to

the effect that the act would apply only to deposits of five dollars and less.

This act was soon followed by three very important alterations or amendments. In 1939, again due to the efforts of Messrs. Andrews and Little, the Legislature removed the clause (chapter 29, Public Laws of N. C., 1939) restricting application of the Act to deposits of \$5.00 and less. Then, on June 7, 1941, the Board of Trustees adopted a unanimous resolution by which it waived the provision of the statute stating that such property should become the absolute property of the University if no claim shall be preferred in ten years. This self-denying resolution, waiving the statute of limitations, later had a great influence in persuading suspicious and hostile banks to comply with the law. Today, it might be added, refunds of any deposits transferred to the University are made upon the written request or the draft of the properly authorized officer of the remitting bank. And, interestingly enough, Mr. Kemp S. Cate, Escheat Officer since 1938, estimates that less than 1% of the total collected has been refunded since his tenure of office.

Even more significant than these changes was Chapter 22, Public Laws of North Carolina, 1939. This omnibus act, introduced by Senators W. Erskine Smith of Stanly and W. G. (Cousin Willie) Clark of Edgecombe was ratified February 14 of that year. It had, among its eight sections, five important sections. Section I provided that "unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporations engaged in construction work in North Carolina for service rendered in such construction work within the State" were declared to be escheats payable to the University upon the expiration of over one year from the time the same became due.

This section changed the existing law in that it made the unpaid wages due and payable within one year. According to Mr. Little, in a memorandum dated February 23, 1939, this section was "designed for the purpose of getting this stuff before they move." He felt, however, that "little is expected from this source except in the case of a big job where a lot of floating labor is used." Unfortunately, the bill did not apply to corporations, because that portion of the bill was stricken out, but Mr. Little felt that they would still be subject to escheat under Section 5786 of Michie's Code, although it "probably would be necessary to

bring an action in Superior Court against some corporation, preferably a large cotton mill."

Section 2 provided that the University of North Carolina was entitled to "rebates and returns of overcharges due by utility Companies which have not been paid to or claimed by the person to whom they are due within a period of two years from the time they are due." In regard to this section, Mr. Little stated the University should concern itself with "gathering up those which may now be outstanding, and standing ready to catch any future ones that may be ordered." In fact, Mr. Little continued, "the Escheats Committee wants someone to be thinking of the way which will offer least resistance to getting meter and connection deposits from the various Utility Companies of North Carolina. They have been informed that this is a source that will produce right much money." Needless to say, this information was correct, because in the last 15 years, the Escheats Fund has realized \$120,569.13 from this source alone, with an average annual income of \$8,003.74 (see Exhibit B, Appendix).

According to Section 3, the University was to be awarded "all monies now in the hands of Clerks of the Superior Court, the State Treasurer, or any other officer or agency of the State or county, . . . as proceeds of the liquidation of state banks by receivers appointed in the Superior Court prior to the Liquidation Act of 1927."

In regard to implementing this provision, Mr. Little's idea was that "as soon as possible each Clerk's office in the State of North Carolina should be visited with the purpose of gathering a few mites from each of them." His admonition as to these collections, incidentally, has been admirably carried out by Mr. Kemp Cate, the present Escheat Officer of the University. Mr. Little advised:

Of course, the better the Clerk likes you, the more generous he will be with you, and I would suggest that someone well endowed with personality visit the Clerk's offices and not be in too big a hurry, get well acquainted with him, take time to explain your cause, and always present the side that you are not looking for money for the University any more than you are endeavoring to protect the property of the absent owner, which duty the law places in your care."

By Section 4, the University was to receive "all monies now in the hands of the Treasurer of the State, represented by state warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years." There was, according to Mr. Little "some opposition" to this section from the Highway Department. This was on account of the

fact that their attorney, Mr. George Ross, was not certain whether or not this section applied to Highway funds, because they did not call their checks "warrants." He recommended that this section be amended to ensure that these funds escheat to the University. Mr. Little, however, "in order not to have opposition on the floor," made an agreement with Mr. Ross that if the latter "would make no point about whether the Bill did or did not apply to Highway Funds, that we would stay off his Department for two years."

The final important section declared that "all monies, claims, or other property coming into the possession of the University of North Carolina under this Act shall be deemed derelict property . . . and if no such claim shall be preferred within ten years . . . then the same shall be held by it absolutely." This however, as has been seen, was waived by the Board of Trustees in 1946.

In addition to urging University officials to make the most of these new rulings in regard to escheats, Mr. Little, in this same memorandum, stated that the Escheats Committee was "interested in getting the dividends on dead accounts from dead National Banks" and intended to get the Department of the Attorney General to bring an action for these balances. He reported that Mr. Charles Woollen had been to Washington twice to see about these accounts and called attention to a very important letter to him, dated November 1, 1932, from the Deputy Comptroller of the United States Treasury Department. In this letter Mr. Little was advised that "there is no provision of the National Banking Laws for disposition of funds in a liquidating national bank that belong to unlocated depositors, etc." Therefore, the letter continued, "the liquidating agent and the board of directors should be governed by the laws of the State."

Due primarily to the initiative of Mr. Little and Mr. Cate, this source too would yield revenue to the Escheats Fund, as we shall see later.

Mr. Little stated, moreover, that the Escheats Committee of the Board of Trustees had an argument with Mr. Gurney P. Hood, Commissioner of Banks, "to get the dead accounts from live banks." Mr. Little felt that the 1939 amendment, removing the \$5.00 restriction clause on these accounts, would treble their income and that Mr. Hood had been "the most cooperative gentleman with whom we have dealt."

Finally Mr. Little exhorted the administrative staff to "get interested in escheats, perfect an organization, and cooperate with

the Committee to the end that we might become as efficient in getting escheats which are, in a sense, revenue as the Revenue Department is in collecting Inheritance Tax and other forms of taxes levied by the State."

The administrative staff saw fit, about this time, to meet this need by appointing Mr. Kemp S. Cate, who had been working on a part time basis, as the Escheats Officer of the University and to him goes much of the credit not only for implementing the foregoing legislative acts and suggestions, but for working closely with Mr. Little and the Escheats Committee in the diplomatic handling and interpretation of his rather difficult assignment.

Two years after the passage of the above-mentioned omnibus act, Senator W. J. Clark introduced Senate Bill No. 85 which was prepared by the office of the Attorney General, at the request of the University. This bill was an attempt to provide effective machinery for the operation of the statute in regard to the escheat of unclaimed bank deposits to the University. The bill passed the Senate and was referred to the Finance Committee of the House. It is interesting to note that the North Carolina Bankers Association directed its official representatives not to oppose this legislation, provided the following amendments were made—all of which were agreeable to the representatives of the University. The amendments would (1) extend the time from five years to ten years before an account should be considered inactive; (2) extend the time from ten to fifteen years during which the University must hold the funds in trust subject to return upon location of a proper claimant; and (3) empower a "duly authorized representative of the University to examine the records of any bank operating in the State to determine the funds therein subject to escheat."⁸

According to Mr. Little, the bill was lost "largely on account of the fact that our bill would not, under the law, apply to similar funds in National Banks" and to the fact that "Mr. Word Wood of the American Trust Company fought us to a standstill on our bill and has a group of bankers organized to oppose our efforts to get this dead money." However, continued Mr. Little, "a great many of the banks, including the Wachovia Chain, are going to give us their money voluntarily. It will be quite a lift and a slap at Brother Wood. Their opposition has created quite an issue in their association due to the fact that their legislative committee

8. North Carolina Bankers Association: Legislative Bulletin, Feb. 6, 1941. In file of Mr. R. E. Little.

promised me the Escheats Bill if I would get the Clerks of Court to sponsor a commission bill. They got their bill but paid off with a story. That is why some of them are sticking to their word voluntarily."⁹

Four years later, the fight on the part of certain banks, led by Mr. Wood, was still going on. In his effort to defeat the avowed purpose of the Constitution, Mr. Wood published a pamphlet entitled "Objections to an Escheat Law Confiscating Bank Deposits." Commenting on this pamphlet, the *Chapel Hill Weekly*, May 10, 1946, editorialized:

The remarkable thing about it is not that it contains statements that are open to question; that is a frequently observed characteristic of propaganda. The remarkable thing about the pamphlet is that it is put out in such form as to make it appear to be a statement from the special committee that was created by the State Bankers' Association to study and report upon the question of escheats.

The Committee had not made, or even formulated, a report upon the matter when Mr. Wood wrote (or had written) and distributed (or had distributed) this pamphlet among the bankers of North Carolina. Mr. Wood is not even a member of the Committee.

Moreover, Mr. Gordon C. Hunter, President of the State Bankers' Association, saw fit to deny that the pamphlet was issued by the association's escheat committee.

At its May, 1946, meeting however, the Association adopted a resolution against the escheats law in question, declaring it to be "confiscation" by the state of unclaimed bank deposits. Such papers as the *Raleigh News and Observer*, the *Chapel Hill Weekly*, and the *Charlotte News* immediately rose to the defense of the University. Particularly outspoken was the last-named paper, in an editorial dated May 14, 1946, which said in part:

The present escheats law provides for "confiscation" only by the greatest stretch of the imagination. It specifies that no account may be taken by the University until the whereabouts of the depositor have been unknown for a five-year period. The University Trustees have promised in writing that they will refund any money immediately when its rightful owner makes application; they make routine refunds now.

Thus it appears that the University's escheats fund is probably a safer place for a vanished depositor to have his money than the bank's vault. And it was clearly the intention of the writers of the Constitution and the legislators who followed that the banks themselves should not retain control of the "lost" money but that it should go to the education of the young people of the state.

The *Chapel Hill Weekly*, May 17, 1946, pointed out that Not all the bankers are in sympathy with the effort to withhold deposits from their rightful owner, i.e., the University. About 7 per cent of the banks including the largest one in the state,

9. R. E. Little to Lindsey Warren, Comptroller of the Currency, July 16, 1941. Copy in possession of Mr. Little.

the Wachovia—have complied with the law. Probably most of the others will be willing to do likewise when they are brought to understand that the escheats law is perfectly valid and that there is no danger whatever that any bank depositor will lose any money to which he is entitled.

Meanwhile there had been rapid-fire correspondence and consultations going on among Major L. P. McLendon (the chairman of the Escheats Committee of the Board of Trustees), Mr. Little, Harry McMullan (the Attorney General of the State), William D. Carmichael (Comptroller of the University), Governor R. Gregg Cherry, and former Governor J. C. B. Ehringhaus¹⁰ as to the procedure to be adopted by the Escheats Committee to bring the banks into line. Mr. Little and Major McLendon were in favor of bringing a test case for the purpose of establishing the right of the University to recover these dead and unclaimed accounts in banks. The matter was referred to the Attorney General, who replied at length in a letter, dated January 18, 1946.

In reviewing the situation, Mr. McMullan pointed out that the Senate Bill 85 had been defeated in 1941 by Mr. Word Wood and others who argued on the part of the State banks that "the statute could not be applied to national banks, and, therefore, would result in discrimination against the State banks, to their disadvantage." Mr. McMullan stated, however, that since that time "the Supreme Court of the United States has decided the case of *ANDERSON NAT'L BANK v. LUCKETT* (Ky.), 32 U. S. 233, 64 S. Ct. 599, 151 A. L. R. 824, 88 L. ed. 692, in which it was held that an escheat law of Kentucky applicable to bank deposits could with equal force be applied to national banks to the same extent that it could to state banks."

Mr. McMullan, therefore, was "inclined to believe that if a proper effort was made prior to the convening of the Legislature by a conference with interested persons, including the bankers' representatives, a bill might be worked out which would produce satisfactory results." He was "personally inclined to the opinion that this course would be preferable to instituting a test suit" and he felt that the matter was "one of such great importance that, before any conclusion is reached one way or another, it would be very desirable" to have a conference with Major McLendon, Governor Ehringhaus, Mr. Carmichael, and Senator Little. He strongly recommended that the matter be followed up, because "there is undoubtedly a large amount of derelict

10. Correspondence files of Mr. R. E. Little.

money in the hands of the banks of the State which does not belong to the banks and which may never be claimed by those entitled to it."

Mr. Little, the next day, wrote Major McLendon that he felt that they "should report the matter to the full Board of Trustees and ask them by resolution to direct the Escheats Committee to proceed in an action at law to collect them. Upon such resolution, we would request the Attorney General to allow us to employ a special attorney to assist in bring the action; and, armed with his invitation, proceed to the Governor to grant us permission to employ you or your firm," Brooks, McLendon, Brim, and Holderness. Mr. Little stated also that the procurement of this money would "be the greatest contribution that has been given the University financially throughout the years," and, once established, would "be like an old milk cow," to which "you can go back at stated intervals and refill the pail, as time will accumulate more and more of it." To secure the services of Major McLendon, Mr. Little offered to pay him personally \$1,000, but this amount was later refused by Major McLendon.

The upshot of the matter was that the Board of Trustees on February 11, 1946, authorized Governor Gregg Cherry to appoint a Committee from the Board of Trustees to confer with a committee from the North Carolina Bankers' Association to consider the Escheats Statute as relates to banks. The Governor accordingly appointed on February 13 Major McLendon as chairman of a five-man committee composed of former Governor Ehringhaus, Mr. R. E. Little, Mr. Victor Bryant of Durham, Mr. Frank Taylor of Goldsboro, and, to serve in an advisory capacity, Attorney General McMullan.¹¹

The committee held its first meeting in the office of the Attorney General on February 28. Also attending, upon invitation of the committee, were the cooperative Commissioner of Banks, Mr. Gurney P. Hood, and Comptroller of the University, Mr. Carmichael, and the Escheats Officer, Mr. Cate. It was there agreed by all that "many of the banks misunderstood the purpose of the Statute and that many of them were not informed that the Supreme Court of the United States had recently held (in *ANDERSON NAT'L BANK v. LUCKETT*, previously referred to) that such statutes were enforceable against national banks [as well as against state banks]."

11. Governor Gregg Cherry to Mr. R. E. Little, February 13, 1946. In file of Mr. Little; *News and Observer*, February 19, 1946.

The committee therefore suggested that if a joint meeting of this committee and a committee from the Bankers Association could be arranged, "it might be possible to get the banks of the State to cooperate with the University's Escheat Officer in compliance with the Statute, and thereby avoid any possible litigation." Accordingly, Governor Cherry was requested to invite the Bankers Association to appoint such a committee.

The resulting Bankers' committee met with the Escheats Committee in the Governor's office on March 22, 1946. The Escheats Committee explained that since both the State Constitution (Art. IX, Section 7) and the Statute Law of the State (G. S., Sec. 116-24) provided for the use of derelict bank deposits by the University, the Trustees "felt a responsibility for the enforcement of the law." In their urgent plea to the bankers, the Escheats Committee called attention to a number of facts:

That many banks apparently misunderstood the application of the Statute;

That the Statute did not apply to any bank deposits the whereabouts of whose owner was known;

That it did not apply to any deposits in connection with which either debits or credits had been entered within a period of five years;

That it did not transfer title to the derelict bank deposits, but merely substituted the University as custodian in place of the banks, until the expiration of ten years after the University had become the custodian without any claim having been filed for the money in the meantime;

That it had long been the policy of the University to pay over the money to any claimant at any time, and that under no circumstances would the University plead the Statute of Limitations.

According to the Trustee Minutes of June 4, 1946, "it was quite evident that some of the bankers present had misunderstood the scope of the Statute and had been under the misapprehension that the University had a right, under the Statute, to take any deposits as escheats upon the mere proof that no claim had been made for the deposit within a period of five years." They further reported that "after a frank and amicable discussion of the problem, some of the bankers stated a willingness to comply with the Statute, and one or two said they had always complied with it." As a result, the bankers present agreed to appoint a committee to confer with the Escheats Committee.

Though the Bankers Committee was duly appointed, no meeting was ever held, because their chairman wrote that "there was no point in holding the meeting, for the reason that the bankers' hands were tied by the resolution adopted at the last annual meeting of the Bankers Association, committing the bankers to opposition to any escheats statute." This action on the part of the bankers was taken after the investigation of a sub-committee which reported that "there is no escheats law pertaining to bank deposits in the adjoining states of Virginia, Tennessee, and South Carolina" and that they had received information from forty states which revealed that out of the forty, twenty-five have no escheats law as to bank deposits.¹²

The Escheats Committee therefore reported to the Board of Trustees, June 4, 1946, that, since the Bankers Association refused to comply with *any* escheats law, they felt that the Board of Trustees had only one of two choices to make: "first, the Board can ignore the Statute, making no attempt to enforce it, or second, the Board can request the Attorney General's office to institute appropriate suits in all cases in which a bank refuses to comply."

Because of this situation, and because only seven per cent of the banks of the State were complying with the escheats law, the following recommendations were submitted by the Escheats Committee and adopted by the Board of Trustees:

1. That the escheat officer [Mr. Cate] employed by the board of trustees (of the University of North Carolina) be instructed to proceed to make demands upon the banks and other institutions and corporations of North Carolina for delivering to the University of any funds and property which shall be surrendered under the escheats statute of the State;
2. That all banks, institutions, and corporations declining to comply with the statute be reported to the Attorney General, with request that appropriate litigation be instituted;
3. That the escheats committee of the (university) board of trustees be requested to render assistance to the escheats officer and the Attorney General in the enforcement of the statute.

At this same meeting, upon the motion of Mr. John Umstead, the following members were added to the regular Escheats Committee: Mr. Edwin Pate, former Governor J. C. B. Eringhaus, Major L. P. McLendon, Mr. Victor S. Bryant, and Miss Gertrude Carraway.

In accordance with the above-mentioned resolutions of the Board, Mr. Kemp Cate, the Escheats Officer of the University, mailed on June 21, 1946, a letter and form to all state and national banks in North Carolina. In the letter, Mr. Cate repeated *in toto* the three resolutions of the Board of Trustees and asked each

12. Reported in Trustee Minutes, June 4, 1946.

bank to give the matter its early attention. On the form itself he emphasized that refunds of any deposit transferred to the University would be made upon the written request or draft of the properly authorized officer of the remitting bank under provisions of the law. On the back of the form appeared the law itself (General Statute 116-24) and the following explanation:

In an opinion to the Commissioner of Banks, dated May 31, 1946, the Attorney General has construed this statute as not including interest bearing accounts and certificates of deposits. This opinion also provides that service charges or intangible taxes charged against such accounts do not constitute debits within the meaning of the statute. The opinion likewise holds that both State and National banks are subject to the provisions of this law . . .

Also included was the resolution of the Board of Trustees of June 7, 1941, waiving the ten-year statute of limitations in regard to refunds and the resolution of January 22, 1946, whereby all escheat funds of the University acquired since the consolidation in 1932 are held as an endowment fund the income therefrom to be used at the three institutions for student loans and scholarships.

As a result of the official opinion of Attorney General Harry McMullan, the resolutions of the Board of Trustees, and the industry of Mr. Cate, the banks—both State and National—began to fall in line. Since 1946 income from this source has risen from \$26,066.35 to \$368,318.75 for the fiscal year ending in July, 1955 (see Exhibit B, Appendix).

While the great battle was going on between the University Trustees and the bankers, an exciting case was also going on in regard to the escheat of an estate in Onslow County. As it happened, in this same year, 1946, a man named Scott in that county called his lawyer and asked him to come to his house to draw up a will. According to evidence, Scott had intended to leave a trust fund for worthy Onslow County youths for educational purposes. Before the lawyer arrived, however, Scott suffered a stroke and was thereafter legally considered mentally incapable of making a will. He died and his only heir, a sister, Julia, soon followed him. Mr. Cate, therefore, as Escheats Officer, was able, through the sale of Scott's estate, to collect \$77,238.66 for the University of North Carolina. This represents the largest single estate to escheat to this institution thus far.

Before the bank issue had been settled, Senator Little, ever zealous to increase the Escheat Fund, introduced into the Senate on March 14, 1945, at the request of former Governor Ehringhaus, Senate Bill 430 in regard to unlawful fares collected by common

carriers. This bill was to be entitled "An Act with reference to unlawful fares collected by common carriers, requiring the payment of same to the Utilities Commission for distribution to those entitled thereto and the escheat of unclaimed portions thereof." According to this bill, if a common carrier increased its rates and if later the Utilities Commission refused to grant the increase, the carrier would be required, within ninety days of determination, to pay to the State Treasurer the excess fares which had been collected. In the event the persons entitled to receive refunds failed to claim them within three years, the amount of these refunds should be paid into the escheat fund of the University of North Carolina.

The bill was referred to the Committee on Public Utilities, where it was killed. Mr. Little was at a loss to understand the opposition to the bill, because it came "largely from people who make their livings indirectly or directly through utilities or utility practice, but they seem bent on the University not getting the money."

Mr. Little thought, moreover, that "in fairness to the Utility Commission and the State it is right for us to make every effort in order that every decision that the Utility Commission may make in the future will be appealed because the carrier or utility will personally benefit from the overcharge—at least till the final determination by an appellant court." With this in mind, Mr. Little wrote Mr. Andrews, Governor Cherry, and former Governor Ehringhaus, and suggested also that they should retain the last-named in the matter and "serve notice on the carriers that we shall make demand for all sums remaining in their hands at the expiration of five years."¹³

As a result of Mr. Little's suggestion, Governor Cherry authorized the employment of Ehringhaus "to act in the matter of the escheat of railroad fares collected illegally by the railroads."¹⁴

This matter was of immediate importance because the railroads within the state—the Atlantic Coast Line, Southern Railway, and Seaboard Air Line—had charged interstate passenger fares of 2.2 cents per mile from August 1, 1944 to July 25, 1945, as authorized by the Interstate Commerce Commission. This order had been contested by the North Carolina Utilities Com-

13. R. E. Little to Thad Eure, Secretary of State, June 15, 1945. Copy in Mr. Little's files.

14. Attorney General Harry McMullan to A. B. Andrews, September 5, 1945. Copy in Mr. Little's files.

mission, who were reversed by a three-judge Federal District Court. An appeal to the United States Supreme Court upheld the Utilities Commission, declared the order of the Interstate Commerce Commission was illegal, and decided that the Utilities Commission order of 1.65 cents per mile on interstate passenger fares was authorized and valid. Therefore, on December 3, 1946, Attorney General McMullan ruled in an official opinion that the Utilities Commission had the authority to carry out its order for overcharge claims, which amounted to \$551,196.00. He ruled further that persons who used the railroads during the period of overcharges were entitled to refunds, provided the claim could be established within two years after the Commission wrote its order. All unclaimed overcharges, he claimed, would escheat to the University.¹⁵

On the basis of this ruling, the State Utilities Commission ordered the three railroads to refund the 0.55 cent per mile difference. Technically, of course, the money might have been refunded to the ticket purchasers, but to qualify they would have been required to present ticket stubs or other legal receipts. Since this was considered an unending and impossible task, the money escheated to the University. The three railroads involved promptly filed suit against the order in Wake Superior Court. Finally, after four years of haggling, a consent settlement was reached among the parties involved. On May 24, 1948 Judge W. C. Harris of Wake Superior Court ruled on the settlement in a formal judgment, thereby giving legal sanction to an agreement reached by the parties involved. The settlement provided that the state would permit the three railroads to pay one half the amount involved, which amounted to an addition of \$275,598.00 to the Escheats Fund of the University. In the final settlement of October 4, 1948, the majority of this, \$190,782.00, was paid by the Southern Railway Company. The Atlantic Coast Line paid \$46,542.00 and the Seaboard Air Line, \$38,274.00.¹⁶

In this important case, the University was represented by former Governor Ehringhaus and Attorney General McMullan. The railroads were represented by Col. W. T. Joyner and Murray Allen of Raleigh. Both Frank Graham, President of the University, and W. D. Carmichael, Comptroller, acknowledged the court order with a statement expressing "deep appreciation" to Ehringhaus and McMullan, who served without charge to the Univer-

15. *Durham Morning Herald*, December 4, 1946.

16. (Raleigh) *News and Observer*, October 5, 1948.

sity, and stating that "this is another example of their long devotion and service to the University and to the people of the State."¹⁷

It is also interesting to note that the University attorneys, despite the failure of the passage of Mr. Little's Senate Bill 430, in 1945, were able to fall back successfully on the State Constitution itself.

With the receipt of this large amount, K. S. Cate was able to report that the escheats fund, then totalling approximately \$700,000, would be built up "close to the million dollar mark." He felt, however, that the state should have held out for the full amount. He also estimated, in February, 1952, that there was at least \$500,000.00 in unredeemed tickets held by transportation companies in North Carolina which should be in the hands of the fund.

Another source of income for which Senator Little and Mr. Cate have fought unsuccessfully, so far, are the unclaimed accounts held by the state's numerous cotton, tobacco, and other cooperatives. As a matter of fact, Mr. Cate asked the 1947 Legislature for authority to look into these accounts, but, as he said, his "pleadings never got to committee," because "the co-op lobbyists were stronger than I and contended the escheats law didn't apply to co-ops." He also pointed to the fact that in 1951, according to a co-op's statement, it had mailed 576,000 checks of which 30,000 were returned for one reason or another. By law, he reasoned, the escheats fund is entitled to the unclaimed money after five years, but only two co-ops had ever turned money over to the fund. The total amounted to \$2,158.89.¹⁸

In an effort to secure these and other similar unclaimed funds, Mr. Cate held conferences with representatives of the North Carolina Cotton Growers Association. However, he and Mr. Little were requested "to postpone any test suit concerning such funds until after a conference could be held with representatives of these associations." Meanwhile Senator Robert Morgan, of Cleveland County, and thirty other Senators introduced a bill in the 1953 Legislature on their own responsibility, but not at the request of the Escheats Officer or the Escheats Committee.¹⁹

The bill itself, actually introduced by thirty-one Senators offered an amendment to Section 116-23 of the General Statutes.

17. *Ibid.*

18. *Burlington Daily Times-News*, February 8, 1952; records in Mr. Cate's office.

19. Kemp S. Cate to Harry McMullan, Attorney General, August 7, 1953. Copy in Mr. Little's files.

The bill, ratified April 30 and recorded as Chapter 1205, Public Laws of 1953, added to the former statute a clause whereby "all unpaid and unclaimed dividends or other distributions due to any person or persons" from cooperative associations were declared to be escheats which were to be paid to the University of North Carolina after the expiration of five years from the time they were due. There was a proviso, however, that this Act would not apply "to a cooperative marketing association engaged only in the marketing of a single agricultural product for the producers thereof;" nor would the Act apply "to any stabilization program on any farm commodities when such program is maintained separate for the benefit of the producer thereof."

Commenting on this Act, Mr. Little wrote Mr. Cate July 16, 1953, that "the above chapter attempts to render the Cotton Co-ops and the Tobacco Co-ops immune from our Escheats Law, which in my opinion raises a constitutional question." Mr. Little stated that he had already taken up the matter with the Attorney General's Office and requested Mr. Cate to enlist Major McLendon's assistance in drafting a letter to the Attorney General. He felt, moreover, that "it is best for us to leave the Legislature alone and rely on the Superior Court" to rule on whether the Legislature "has authority to designate what is an escheat and what is not."

In the resulting letter, drafted by Mr. Cate and Major McLendon, the following paragraph summarized their views on the matter:

It appears to us that the exemption provisions are unconstitutional and void for the reason that it is not based upon any reasonable classification of these businesses, and secondly, that the Legislature is without constitutional authority to exempt any property from the escheats provisions of the Constitution . . . Our Committee feels that it is under obligation to try to recover any funds which have lawfully escheated to the University under the Constitution and that, if necessary, the constitutionality of this Act of 1953 should be tested, provided of course, you are of the opinion that such a course should be followed.²⁰

The reply of the Attorney General was discouraging. In a letter to Mr. Cate, dated August 13, 1953, he stated that as "administrative officers of the State, we are not in position to raise the question as to the constitutionality of an Act of the General Assembly" and it was his opinion that it "would be unwise and probably unsuccessful to attempt to pass upon the constitutionality of a statute."

20. Kemp S. Cate to Harry McMullan, Attorney General, August 7, 1953. In Mr. Little's files.

And thus the situation as to unclaimed funds in these cooperatives remains.

Another profitable source of revenue hit upon by Mr. Little and Mr. Cate was unclaimed funds in life insurance companies. In order to acquire this money, Mr. Little and Mr. Henry A. McKinnon of Robeson County introduced into the Senate, February 25, 1949, Senate Bill 181, entitled "A Bill to be entitled an Act relating to unclaimed funds held or owing by Life Insurance Companies." By the provisions of this bill, the Escheats Fund would be entitled to "any monies held or owing by any life insurance company under any insurance policy on the life of a resident of this State" which should have remained unclaimed for seven years. On March 31, 1949, the bill was ratified by both houses of the Legislature. As a result of the passage of this bill, \$134,729.90 has been realized by the Escheats Fund (see Exhibit B, Appendix).

Still another possible source of income for the Escheats Fund were unredeemed race track tickets. On March 2, 1951, Senator Little, along with Senators Hamilton Hobgood of Franklin County, W. H. S. Burgwyn, Jr., of Northampton, Wills Hancock of Granville, and Julian R. Allsbrook of Halifax County, introduced Senate Bill 292, which was a bill "to clarify the escheats law with respect to unredeemed race track tickets, derelict funds represented by unpaid checks, etc." This bill, referred to the Committee on Judiciary No. 1, was returned April 10, 1951, with an unfavorable report. In addition to granting all unclaimed bets on horse or dog races as escheats to the University, the bill would also have granted the University "all sums represented by . . . all outstanding checks issued by any association, partnership, institution, corporation, or the United States Government, or any agency thereof, to any North Carolina corporation or to any person who was a resident of North Carolina . . . which have not been paid within one year from the date of issuance."

Better luck in regard to this bill was encountered in 1953 at the next session of the Legislature. Senator Edwin Pate introduced, and was able to get passed, Senate Bill 379 on April 30—the last day of the session. Among other things this act amended Section 116-25 of the General Statutes of North Carolina to include the following paragraph: "All sums due any person or persons by reason of placing bets on any horse or dog races at any race track in this State where the placing of such bets is legal, and which have remained unclaimed and unpaid for sixty days,

are hereby declared to be escheats" to the University. As a result, Mr. Cate was able to collect \$31,328.30 from the Morehead and Moyock Race Tracks in the fall of that year. Unfortunately for the Escheats Fund, the next Legislature outlawed dog racing in North Carolina.

In 1953 Mr. Cate brought to the attention of the Attorney General a problem which confronted him in regard to unpaid salaries and wages, which, according to the Escheats Statute, General Statutes, 116-23, should escheat to the University after five years. It seems that several corporations in the State had taken the position that "their responsibility as employer ends after three years, because of the three-year Statute of Limitations." They argued, therefore, that after three years, "the funds are not unclaimed—that they are in existence legally, and, therefore, the five year Escheats Statute never becomes applicable." Some of the corporations, according to Mr. Cate, suggested "that they will be perfectly willing for us to bring a friendly suit to determine this question." Though these corporations had not said they would accept the opinion of the Attorney General, Mr. Cate felt that he "might be able to persuade several large corporations to comply with your opinion without a suit."²¹

The Attorney General replied that he felt "the position taken by the corporations . . . is untenable" and believed that the provisions of the Escheats Act should be enforced.²²

On the strength of this opinion, Mr. Cate suggested to Mr. Little the possibility of a suit "against a friendly corporation, say R. J. Reynolds Tobacco Company, for unclaimed salaries and wages, and possibly unclaimed dividends and stocks."

As yet, no decisive action has been taken on this matter, except that it might be of interest to note that William B. Rodman, the Attorney General of North Carolina, has been in correspondence with the Attorney General of New Jersey, where a similar case is now in litigation.

A recent matter of great significance in the history of escheats to the University is the disposition of the fund itself. It has already been seen that from 1789 until recent years money derived from this source had been used as a whole or in part for various projects of the University: the building fund, the maintenance fund, the Kenan Endowment, the Southern Historical

21. Kemp S. Cate to Harry McMullan, Attorney General, August 7, 1953. Copy in Mr. Little's files.

22. Harry McMullan to Kemp Cate, August 13, 1953. Copy in Mr. Little's files.

Collection, etc. It was not until 1944, however, that the issue of a perpetual endowment was seriously considered.

On February 5 of that year, Mr. Cate had the vision to see the issue and wrote Mr. Little that he thought that at the next Trustees' meeting it "should be decided HOW, and for what PURPOSE, Escheats funds will be used," because though it was his job to get the money, he was invariably asked this question. Mr. Cate continued:

I would like to see the Escheats fund set up as an endowment fund with only the income therefrom expendable. First, for the operation of the fund, the remainder each year to be used the following year as scholarships of \$500.00 each, on the basis of two to be awarded by the University, one each by State and Woman's College.²³

Again, on August 19, 1944, Mr. Cate recommended in a letter to the members of the Escheats Committee that "you Gentlemen propose to the Trustees at their next meeting that the Escheats Fund be made an endowment fund with only the income expendable. If a resolution was passed to this effect I think the number one obstacle would be removed from a growing fund."²⁴

As might be expected, Mr. Little was equally as concerned over the matter as Mr. Cate. His insistence was no doubt increased by the fact that Mr. John W. Clark of Greensboro, a Trustee, was interested in allocating \$80,000 from the Escheats Fund for the benefit of the Engineering Foundation at State College. Mr. Little was "absolutely opposed to the breaking up of this fund," which he looked upon as a "Utility Fund," because it was the "only fund under the control of the University that they can use for purposes outside the Budget." As he saw and "dreamed" of this fund, he could see "a fund larger than the Kenan Fund, and, if held together and properly invested, when we meet the next panic, we could supplement the salaries of members of our faculty from it or at least keep them from being reduced to the point where they would have to accept offers from other institutions."²⁵

Moreover, both Mr. Little and Mr. Andrews were opposed to paying a planner for the University from the Escheats Fund. In fact the former was "ready to quit if the Escheats Fund is going to be used to replace or to supplement funds that should come from the State General Fund."²⁶

23. Kemp Cate to R. E. Little, February 5, 1944. Mr. Little's file.

24. In Mr. Little's file.

25. R. E. Little to A. B. Andrews, September 26, 1945. Copy in Mr. Little's file.

26. *Ibid.* to *ibid.*, October 10, 1945. Copy in Mr. Little's file.

In January, 1946, Mr. Andrews, after consultation with Mr. Cate, came forth with a practical solution for handling the Escheats Fund. He felt it should be divided into four units: "(1) the Escheats that accrued prior to the consolidation of the University in 1932, and (2) what has come in since should be divided into three shares (A) for the University at Chapel Hill, (B) State College at Raleigh, (C) Woman's College at Greensboro."²⁷

This solution was based on the fact that the Attorney General had ruled that the Escheats Fund, since consolidation, was for the benefit of the entire University in its three component parts, except that the Fund prior to that time was the property of the Chapel Hill unit.

At the meeting of the Executive Committee, which met January 22, 1946, Mr. Clark proposed that the Escheats Fund should be allotted to the three institutions "to be used for research."²⁸ Before any action was taken, Mr. Carmichael, Controller of the University, reported that since the consolidation of the University, the Escheats Fund had grown "to just over \$400,000, and that one of the most helpful talking points the University has had in going to banks, power companies, etc., has been its statement that this money was kept intact in case of future claims against it." He therefore made the following suggestions, which, on motion of Mr. Andrews and seconded by Mr. John W. Clark, were unanimously adopted:

1. That the principal of this fund be held intact and invested in the same manner as other trust funds are invested.
2. That the advances to the three institutions be repaid, or bear interest at not less than 3% from July 1, 1946.
3. That the net income from the principal fund be set up as of June 30, of each year, and distributed to the three institutions not later than October 15, based on student enrollment as of October 1, of each year.
4. That the net income so distributed, shall be used by the separate institutions for loan funds and scholarships.

And so, thanks to the vision and resourcefulness of Messrs. Cate, Little, Andrews, and Carmichael, the Escheats Fund of the University of North Carolina was hereafter to be dedicated to the democratic and laudable purpose of providing educational opportunities to worthy, but needy, youth of the state. A glance at Exhibit C in the Appendix will reveal that since that time, 1946, a total of \$289,247.67 has been distributed on a pro rata basis according to enrollment to the three branches of the Consolidated

27. A. B. Andrews to R. E. Little, January 19, 1946. Mr. Little's file.

28. A. B. Andrews to R. E. Little, January 23, 1946. In Mr. Little's file.

University and that there has been a significant annual increase in the amount available. This increase is attributable to the fact that Mr. Cate has in recent years been increasing the principal at an average of \$100,000 or more per year, as may be seen by Exhibit D.

Attention is also called to Exhibits A and B prepared by Mr. Cate, which show the present value of the Escheats Fund, the collections by sources for the fiscal year ended June 30, 1955, the expenditures of the fund, and, what is particularly impressive, the gross collections by sources from July 1, 1933 to June 30, 1955. As seen by these figures, the fund now has an inventory value of \$1,799,781.17 and a market value, as of June 30, 1955, of \$2,325,082.87.

Not content with this accomplishment, Mr. Cate, strongly supported by Mr. Little and the other members of the Escheats Committee, has been laboring to secure legislation which would free other sources of unclaimed public funds which should rightfully fall to the Escheats Fund of the University. Outstanding among these sources are unclaimed money in cotton and tobacco cooperatives, unredeemed tickets from bus and transportation companies, and a veritable treasure trove of wealth, the unclaimed refunds which are due the taxpayers of North Carolina from the Director of Internal Revenue.

On the basis of the remarkable progress in legislation relating to escheats and to the endeavors of the Escheat Officer and the Escheats Committee, it may not be long before these sources of income too will contribute to the education of the youth of North Carolina.

REPORT ON ESCHEATS PRINCIPAL FUND
FOR THE YEAR ENDED JUNE 30, 1955

VALUE OF FUND—July 1, 1954 \$1,701,422.44

COLLECTIONS	Gross	Refunds	Net
Estates, Trusts, etc.	\$ 47,445.98	\$10,039.14	\$37,406.84
Dormant Bank Deposits, etc.	22,996.43	2,116.35	20,880.08
Unclaimed Salaries and Wages	391.89	13.71	378.18
Unclaimed Utility Deposits	6,936.04	86.56	6,849.48
Unclaimed State Warrants	5,935.45	18.12	5,917.33
Unclaimed Insurance Funds	23,015.54	1,405.30	21,610.24
Totals	<u>\$106,721.33</u>	<u>\$13,679.18</u>	<u>\$93,042.15</u>

Plus gain on sale of securities by Fiscal Agent 5,316.58

NET INCREASE IN VALUE OF FUND 98,358.73

VALUE OF FUND—June 30, 1955 \$1,799,781.17

VALUE OF FUND REPRESENTED BY:

Cash—Bank of Chapel Hill	\$7,899.43
Special Deposit—Draft Account	500.00
Travel Advance	50.00
Real Estate—Chapel Hill	30,175.32
Fiscal Agent's Inventory—at cost	1,761,156.42
Total	<u><u>\$1,799,781.17</u></u>

Note: Yield on investments for the year was 3.993%

Prepared by

K. S. Cate

Chapel Hill, N.C.

July 30, 1955

Exhibit B

REPORT ON ESCHEATS PRINCIPAL FUND GROSS COLLECTIONS
BY SOURCES FROM JULY 1, 1933 TO JUNE 30, 1955

Source	Amount	Percentage
Estates, Trusts, etc.	\$ 682,426.49	35.94
Dormant Bank Deposits, etc.	368,318.75	19.40
Closed State Banks	211,357.66	11.13
Unclaimed Salaries and Wages	19,763.55	1.05
Unclaimed Utility Deposits	120,569.13	6.35
Unclaimed State Warrants	28,513.71	1.50
Unclaimed Corporation Dividends	21,090.92	1.11
Unclaimed Corporation Stock	4,956.25	.26
Unclaimed Insurance Funds	134,729.90	7.10
Unclaimed Out Race Tickets	31,328.30	1.65
Overcharges from Railroad Companies	275,598.00	14.51
Totals	1,898,652.66	100.00
Less Refunds	98,871.49	5.21
Net	<u>\$1,799,781.17</u>	<u>94.79</u>

INVESTED IN	Value		Percentage
	Market—6/30/55	Inventory	
Common Stocks	\$1,121,502.50	\$ 573,733.06	31.88
Bonds	1,023,179.01	1,045,646.75	58.10
Notes and Mortgages	100,575.00	100,575.00	5.59
Real Estate	65,236.94	65,236.94	3.62
Uninvested Cash	14,589.42	14,589.42	.81
Totals	<u>\$2,325,082.87</u>	<u>\$1,799,781.17</u>	<u>100.00</u>

Prepared by
K. S. Cate
Chapel Hill, N. C.
July 30, 1955

HISTORY AND PRESENT STATUS OF ESCHEATS

Exhibit C

DISTRIBUTION OF INCOME FROM ESCHEATS PRINCIPAL FUND
FOR SCHOLARSHIPS AS FOLLOWS:

Date	Total	Univ. of N.C.	State Col.	Woman's Col.
6/30/47	\$ 13,294.15	\$ 6,690.18	\$ 4,727.92	\$ 1,876.05
6/30/48	9,660.44	4,913.92	3,371.81	1,374.71
6/30/49	12,861.81	6,711.89	4,172.16	1,977.76
6/30/50	26,472.35	13,663.15	8,019.93	4,789.27
6/30/51	37,423.85	18,324.67	11,750.90	7,348.28
6/30/52	39,056.61	18,179.93	13,062.04	7,814.64
6/30/53	45,202.37	21,286.67	15,207.49	8,708.21
6/30/54	49,221.25	23,542.45	16,624.60	9,054.20
6/30/55	56,054.84	26,888.50	19,678.69	9,487.65
Totals	<u>\$289,247.67</u>	<u>\$140,201.36</u>	<u>\$96,615.54</u>	<u>\$52,430.77</u>

Prepared by
K. S. Cate
Chapel Hill, N. C.
July 30, 1955

Exhibit D

REPORT ON ESCHEATS PRINCIPAL FUND SHOWING INCREASE
IN FUND BY YEARS FROM JUNE 30, 1939 TO JUNE 30, 1955

Year	Collections	Refunds	Net Balance
June 30, 1939			
Accumulated from 1933	\$ 200,886.11	\$ 8,858.68	\$ 192,027.43
1940	52,991.76	2,319.58	242,699.61
1941	37,113.53	7,461.45	272,351.69
1942	22,091.46	2,665.73	291,777.42
1943	28,388.29	3,167.67	316,998.04
1944	51,277.07	1,588.85	366,686.26
1945	23,431.06	1,560.05	388,557.27
1946	68,793.62	1,984.99	455,365.90
1947	171,838.69	3,631.05	623,573.54
1948	75,801.24	3,068.51	696,306.27
1949	382,228.27	2,077.54	1,076,457.00
1950	131,898.38	6,202.59	1,202,152.79
1951	191,801.71	16,334.11	1,377,620.39
1952	76,496.73	7,127.75	1,446,989.37
1953	124,408.33	6,424.61	1,564,973.09
1954	152,485.08	10,719.15	1,706,739.02
1955	106,721.33	13,679.18	1,799,781.17
Totals	<u>\$1,898,652.66</u>	<u>\$98,871.49</u>	

Prepared by
K. S. Cate
Chapel Hill, N. C.
July 30, 1955

Present Statutory Law Relating to Escheats

G. S. 116-20. Escheats to university.—All real estate which has heretofore accrued to the state, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation.

(Vested rights cannot be impaired by repeal of section.—The legislature is without power under the due process clause of the constitution to deprive the trustees of such escheated property which by virtue of this section has vested in them, by a subsequent act repealing this section.)

Land held by incorporated town held to escheat upon repeal of town charter under the facts of this case. U of N C vs High Point.

G. S. 116-21. Evidence making prima facie case.—In all cases where land situated in this state is claimed by the University of North Carolina by right of escheat, it shall be sufficient to prove, in order to make out prima facie case of escheat, that the land claimed was granted by the state of North Carolina; that the grantee, or any subsequent owner thereof, died without disposing of said land either by conveyance or will, registered or probated prior to the institution of the action, and that for fifty (50) years subsequent to the death of the last known owner, no person has appeared to claim the land either as devisee, grantee, or heir.

G.S. 116-22. Unclaimed personalty of settlement of decedents' estates to university.—All sums of money or other estate of whatever kind which shall remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto.

G. S. 116-23. Other unclaimed personalty to university.—Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

G. S. 116-24. Certain unclaimed bank deposits to university.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the University of North Carolina shall cause to be posted and keep posted for thirty days at the courthouse door of the county in which such bank is located, a notice giving the name of the person in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the bank paying over said funds to the University of North Carolina shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is

the identical person to whom such funds are due, the University of North Carolina shall pay the same in full to such person, but without any liability for profit or interest thereon.

G. S. 116-25. Other escheats.—Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm or corporation engaged in construction work in North Carolina for services rendered in such construction work within the state are hereby declared to be escheats coming within the law of this state, and the same shall be paid to the University of North Carolina immediately upon the expiration of one year from the time the same became due.

Rebates and returns of overcharges due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the utilities commission, shall be paid to the University of North Carolina.

All monies in the hands of clerks of the superior court, the state treasurer, or any other officer or agency of the state or county, or any other depository whatsoever, as proceeds of the liquidation of state banks by receivers appointed in the superior court prior to the liquidation Act of 1927, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over such funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies in the hands of the treasurer of the state, represented by state warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

All monies, claims or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

Any funds derived from the liquidation of any national bank organized and operated in this state, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the comptroller of the currency as provided by Title 12 of United States Code Annotated, section 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the comptroller of the currency and deposited with the treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stock holder of this state, which for a period of ten years after becoming due such depositor or stock holder or available for distribution to any stock holder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the University of North Carolina by the comptroller of the currency, or by such agent as may have the funds in charge, to be held in protective custody by the University of North Carolina until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the University of North Carolina, the comptroller of the currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the University of North Carolina shall cause to be posted, and keep posted for thirty days, at the courthouse door of the county in which such insolvent bank did business, a notice

giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided the comptroller of the currency or liquidating agent of such insolvent national bank shall furnish such information to the University of North Carolina when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund is due, the University of North Carolina shall pay such part in full to such person, but without any liability for profit or interest thereon.

G. S. 116-26. Application of receipt.—All receipts heretofore had or hereafter to be had from escheated property or derelict property, and all interest and earnings thereon, shall be set apart by the trustees of the University so that the interest and earnings from said fund shall be used for maintenance and/or for scholarships and loan funds to worthy and needy students, residents of this state, attending the University of North Carolina, under such rules and regulations as shall be adopted by the board of trustees of the University with regard thereto.

G. S. 53-20 (12). List of Claims Presented and Deposits; Copies; Proviso.—Upon the expiration of the time fixed for presentation of claims, the commissioner of banks, or the duly appointed agent, shall make a full and complete list of the claims presented and of the deposits as shown, including and specifying any claims or deposits which have been rejected by him, and shall file one copy in the office of the clerk of the superior court in the pending action, and shall keep one copy on file with the inventory in the office of the bank for examination. Any indebtedness against any bank which has been established or recognized as a valid liability of said bank before it went into liquidation, for which no claimant has filed claim, and/or any liability for which claim has been filed and disapproved, shall be listed in the office of the clerk of the superior court of the county in which the bank is located, by the liquidating agent, and the dividends accruing thereto shall be paid to the escheator of the University of North Carolina. Any claim which may be presented after expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the bank in the hands of the commissioner of banks, and undistributed at the time the claim is presented; Provided that when it is made to appear to the judge of the superior court, resident or presiding in the county, that the claim could not have been filed within said period, said judge may permit those creditors or depositors who subsequently file their claim to share as other creditors.

(16) Liquidation of banks

Unclaimed Dividends Held in Trust.—The unclaimed dividends remaining in the hands of the commissioner of banks for six months after the order for final distribution shall be held in trust for the several depositors and creditors of the liquidated bank; and the money so held by him shall be paid over to the persons respectively entitled thereto as and when satisfactory evidence of their right to the same is furnished. In the case of doubtful or conflicting claims the commissioner of banks shall have authority to apply to the superior court of the county, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the moneys so claimed. When issues of fact are raised by said motion, the same may, upon request of the claimant, be submitted to the jury for determination as other issues of fact are determined. The interest earned on the unclaimed dividend so held shall be applied toward defraying the expense incurred in the distribution of such unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds of the banking department to the credit of the commissioner of banks. After the commissioner of banks has held the unclaimed dividends held in trust by him under the provisions of this statute for the several depositors and creditors of the liquidated bank for a period of ten years, he is hereby given the

authority to pay the principal amount of such unclaimed dividends to the University of North Carolina, to be held by the University of North Carolina without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. Upon payment of the said unclaimed dividends to the University of North Carolina, the commissioner of banks shall be fully discharged from all further liability therefor.

G. S. 55-132.—Corporate existence continued three years. Where a corporation is dissolved in any manner and six months shall have elapsed after the expiration of its corporate existence as continued by or pursuant to the foregoing provisions of this section for the purposes therein expressed, and any share of any stockholder of any money or other property in any division of money or other property among the stockholders of such corporation shall then remain in the hands of the director of such corporation, such share shall escheat to the University of North Carolina to be held without liability for profit or interest until a just claim therefor shall be preferred by the party or parties entitled thereto. The provisions hereof shall apply to any corporation heretofore dissolved as well as to corporations hereafter dissolved.



